

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

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75-1019

IN THE
United States Court of Appeals
For the Second Circuit

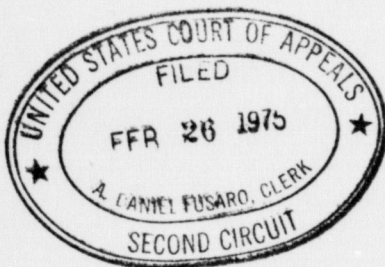
No. 75—1019

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against

BERTRAM L. PODELL and MARTIN MILLER,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' JOINT APPENDIX



LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Appellant
Bertram L. Podell
522 Fifth Avenue
New York, New York 10036
212/687-4100

MARX & SQUITERO, ESQS.
Attorneys for Appellant
Martin Miller
2951 South Bayshore Drive
Miami, Florida 33133
305/443-4832

5

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INDEX

	Page
Docket Entries	1
Indictment	15
Transcript of Guilty Pleas of Bertram L. Podell and Martin Miller.	41
Letter of Michael B. Mukasey, Assistant United States Attorney, dated January 2, 1975, to the Hon. Robert L. Carter	53
Motion to Withdraw Plea of Guilty of Bertram L. Podell and Martin Miller	56
Affidavits in Support of Motion.	58
Transcript of Evidentiary Hearing on Motion to Withdraw Plea of Guilty and Sentencing Minutes dated January 9th, 1975	65
Judgment and Probation/Commitment Order of Bertram L. Podell	210
Notice of Appeal of Bertram L. Podell.	212
Notice of Appeal of Martin Miller.	213

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES,

v.

73 CRIM. 675
JUDGE CARTER

BERTRAM L. PODELL, HERBERT S.
PODELL, MARTIN MILLER.
-----X

Proceedings

7-12-73 Filed indictment.

7-23-73 Deft. B.L. Podell (atty. present). Pleads not
 guilty. Deft. to be photographed and finger-
 printed. Application to the U.S. Atty. if
 deft. leaves the U.S. 10 days for motions. Deft.
 released on his own recognizance.

 Deft. S. Podell (atty. present). Pleads not
 guilty. Deft. ordered photographed and finger-
 printed. 10 days for motions.

 Deft. Miller (atty. present). Pleads not guilty.
 Deft. ordered photographed and fingerprinted.
 10 days for motions. Case assigned to Judge
 Carter for all purposes. Ward, J.

8- 2-73 BERTRAM PODELL-Filed notice of appearance for
 deft. by James M. La Rossa.

8- 2-73 HERBERT S. PODELL-Filed notice of appearance
 for deft. by Robert Gould.

8- 2-73 MARTIN MILLER-Filed notice of appearance for
 the deft. by I. Stephen Rabin.

8-17-73 MARTIN MILLER - Filed affdvt. and order extending deft's. bail limits to include the United Kingdom and Belgium during the period Aug. 20, 1973 to Aug. 26, 1973.---Wyatt, J.

8-29-73 MARTIN MILLER - Filed notice of motion to compel disclosure of all exculpatory material and information.

8-29-73 MARTIN MILLER - Filed notice of motion for severance or change of venue.

8-29-73 MARTIN MILLER - Filed affdvt. of Richard B. Marx in support of defendants various motions.

8-29-73 MARTIN MILLER - Filed defendant's affdvt. Memorandum of law in support of motion for severance and for change of venue.

8-29-73 MARTIN MILLER - Filed affdvt. of defendant in connection with motion for severance, etc.

8-29-73 MARTIN MILLER - Filed notice of appearance by Richard B. Marx, Esq., 2951 South Bayshore Drive, Miami, Florida 33133.

8-30-73 BERTRAM L. PODELL - Filed affdvt. and notice of motion for the following: (1) discovery & inspection (2) a bill of particulars (3) to produce Brady Material. -- ret. on Oct. 5, 1973.

8-30-73 BERTRAM L. PODELL - Filed deft's. memorandum of law in support of above motion.

8-30-73 HERBERT S. PODELL - Filed affdvt. and notice of motion for a bill of particulars and for inspection and discovery - ret. 10-5, 1973. (This motion also to be considered a joint motion with defendants B.L. Podell and M. Miller).

9- 5-73 MILLER, Martin - Filed Motion to Dismiss Indictment.

9- 5-73 MILLER, MARTIN - Filed Memorandum of Law in Support of Deft's Motion to Dismiss.

9-26-73 All defendants - Filed Government's affdvt. in opposition to various pre-trial motions.

9-26-73 MILLER - Filed Government's affdvt. in opposition to deft's motion to dismiss indictment, or for severance.

9-26-73 B. Podell - Filed Government's affdvt. in opposition to deft's motion for discovery.

9-26-73 MILLER - Filed Government's memorandum of law in opposition to deft's motion for dismissal or severance.

9-26-73 ALL DEFTS. - Filed Government's memorandum of law in opposition to various pre-trial motions (discovery and Bills of Particulars).

10-10-73 PODELL - Filed order permitting defendant to travel to Turkey and the European Continent from 10-18-73 to on or about 11-2-73 -- Carter, J.

10-12-73 MILLER - Filed affdvt. in support of defendant's motion to dismiss (affdvt. of Stephan Rabin).

10-12-73 MILLER - Filed affdvt. of Martin Miller in support of motion to dismiss indictment.

10-19-73 MILLER - Filed Government's affdvt. of AUSA Jaffe in opposition to deft's motion to dismiss and for suppression.

10-19-73 MILLER - Filed Government's affdvt. of AUSA Mukasy in opposition to deft's motion to dismiss and for suppression.

10-19-73 MILLER - Filed Government's affdvt. of AUSA Guiliani in opposition to deft's motion to dismiss and for suppression.

11- 7-73 MILLER - Filed memorandum in support of motion of deft. to dismiss the indictment.

11-12-73 MILLER - (atty. present) - Hearing begun and concluded. Dec. reserved. Carter, J.

11-15-73 HERBERT S. PODELL - Filed Consent Order - Ordered that the bail limits of Herbert S. Podell is ext. so as to permit him to travel to and from the Bahamas on Nov. 21, 1973 and Nov. 25, 1973 and it is further ordered that deft. Herbert S. Podell shall return to the SDNY and appear before this Court within 48 hrs. of the receipt by his attys., Shea, Gould, Climenko and Kramer of any written notice from the office of the U.S. Atty., for the SDNY requesting his return. Carter, J.

11-29-73 MILLER - Filed deft's post hearing memorandum in support of motion to dismiss the indictment.

12- 7-73 Filed Government Notice of Readiness for Trial.

1- 4-74 MARTIN MILLER - Filed affdvt. and notice of motion for severance - ret. 1-11-74

MARTIN MILLER - Filed deft's memorandum of law in support of motion for severance.

1- 4-74 BERTRAM L. PODELL - Filed affdvt. and notice of motion to suppress - ret. 1-14-74 at 4:30 PM.

1-11-74 Filed Government's Memorandum in opposition to Deft. Miller's second motion for severance.

1-10-74 Filed Government Determination and Designation - Theodore Katz, Law Clerk to the undersigned Judge is hereby designated and authorized to attend, together w/counsel for the deft. Bertram L. Podell at the office of the Clerk of the House of Representatives of the U.S. Congress to obtain certified copies of said reports, the

originals of which are in the possession and control of said Clerk - Carter, J.

- 1-11-74 Filed one envelope sealed, not to be opened except on authority of the Court. Carter, J. (in vault) rm. 602.
- 1-11-74 Filed ORDER - Ordered that the copies of any documents to be served by the Atty. Gen. of the US in response to defts' electronic surveillance motions shall be turned over to the counsel for the defts shall be retained in the custody of such counsel and access to the aforementioned documents is restricted to the defts. and their counsel, etc. as indicated. Carter, J.
- 1-14-74 Filed OPINION #40209 - re MARTIN MILLER's motion to dismiss the Indictment against him is denied.
- 1-14-74 Filed Memorandum of Law in opposition to Deft. Bertram Podell's Motion to suppress and to dismiss count ten.
- 1-14-74 Filed Memo - endorsed on Notice of Motion dtd 1/4/74 - Motion denied - So ordered - Carter, J.
- 1-10-74 Filed ORDER TO SHOW CAUSE returnable at 10:00 A.M. Rm. 1305, why an order should not be entered pursuant to Title 18, U.S.C. Sec.3503 due to exceptional circumstances existing in this case, etc. - Carter, J.
- 1-15-74 Filed Answering Affidavit in opposition to the Government's Motion by Order to show cause re: above.
- 1-15-74 Filed Affidavit of Dr. John L. Petersen.
- 1-15-74 Filed OPINION #40221 - The government moves by order to show cause to be permitted to take deposition of Ronald C. Kinsey and Albert Waldman, pursuant to Title 18, U.S.C. Sec.3503.

The defts. are charged with conspiracy to defraud the government, accepting and giving bribes, conflict of interest, conspiracy to give false statements to the FBI and perjury. --Because removal of doubt concerning this question is of general significance and of critical importance to the parties in this case, I have requested, and both sides have agreed to cooperate in seeking an early review and resolution by the Court of Appeals. Accordingly, trial is adjourned until February 4. - Carter, J.

1-30-74 MARTIN MILLER - Filed Order extending bail limitation of Deft. to include Mexico during 1/24/74 to 1/31/74 - Carter, J.

2- 1-74 Filed ORDER - Theodore Katz, Law Clerk to Judge, Gerald Shargel of counsel to James La Rossa, atty. for the deft. Bertram Podell & Joseph Jaffe, Asst. U.S. Atty. for SDNY of counsel to Paul J. Curran, U.S. Atty for U.S.A. shall attend together at the office of said Clerk of the House of Representatives of the U.S. Congress, on 2/8/74 at 11:00 A.M. to obtain certified copies of the reports, the originals of which are in the possession and control of the said Clker, which were the subject of the Subpoena Duces Tecum dtd. 10/19/73, duly served on the Clerk of the House of Representatives. It is so ordered. - Carter, J.

2-20-74 Filed ORDER - Harlon Dalton Law Clerk to Judge, Andres Kosloff associated w/James LaRossa, atty. for the deft. Bertram L. Podell & Joseph Jaffe, Esq., Asst. U.S. Atty. for SDNY of counsel to Paul J. Curran, U.S. Atty. shall attend together at the office of said Clerk of the House of Representatives of U.S. Congress on 2/21/74 at 11:00 A.M. to obtain certified copies of reports the originals of which are in the possession and control of said Clerk, which were the subject of Subpoena Duces Tecum dtd. 12/19/73 duly served on the Clerk of the House of Representatives. It is so ordered. - Carter, J.

3- 1-74 Filed Memo - endorsed on Notice of Motion for Severance dtd. 2/7/74 - Motion granted, So Ordered - Carter, J.

3- 4-74 Filed for Herbert S. Podell - Notice of Motion for severance returnable 2/7/74 severing the trial of deft. Podell, etc.

3- 4-74 Filed ORDER to take deposition of Ronald C. Kinsey Government witness, on March 11, 1974 at 10:00 A.M. - The defts. together with their retained counsel shall have the right to attend the said examination and to cross examine - The expense of travel & subsistence of the defendants and one attorney for each deft. and be paid by the Govt. and U.S. Marshal for SDNY is directed to make such payment as is proper. This order shall constitute proper notice of the deposition to be taken. The Government is not required to serve any further notice pursuant to Title 18, U.S.C. Sec.3503(b) - It is so ordered - Carter, J.

3-15-74 HERBERT S. PODELL - Filed ORDER that deft. be permitted to travel from 3/16/74 - 3/24/74 - Carter, J.

3-15-74 HERBERT S. PODELL - Filed Affidavit in support of deft's application for permission to travel.

3-26-74 Filed ORDER to take deposition of Ronald C. Kinsey on 4/5/74 - the expense of travel and subsistence of the defts. and one atty. for each deft. shall be paid by the Govt. and U.S. Marshal for S.D.N.Y. is directed to make such payments as are proper. The Clerk of U.S.D.C. of Western District of Washington, is directed to issue a subpoena for Ronald C. Kinsey, compelling his appearance time and place. This order shall constitute proper notice of deposition to be taken. CARTER, J.

3-27-74 Filed True Copy from U.S. Court of Appeals -
that petition for a writ of Mandamus having been
filed herein by counsel for the petitioner and
argument have (sic) had thereon, it is ordered
that said petition be and it is hereby granted
in accordance with the opinion of this court. -
Clerk

4- 3-74 Filed ORDER the deposition of Ronald Kinsey to
be held according to an order and filed on 3/26/74
shall be held on Friday 4/12/74 at 10 A.M., and
that order is amended accordingly. - CARTER, J.

4-19-74 Filed Deposition of Ronald C. Kinsey taken 4/12/74
Dated at Seattle, Wash. 4/(illegible).

5-17-74 Filed Notice of Motion for Deft. Martin Miller,
returnable 5/31/74 at 10 A.M. for order dis-
missing Ct.4 or Ct.6 of Indictment, etc.

5-17-74 Filed Memorandum of Law in support of motion
to compel election of counts and to compel
witness list.

5-29-74 Filed Government's Memorandum in Opposition to
Miller's Motions for dismissal election of Counts
and discovery.

5-29-74 Filed for Deft. Herbert S. Podell Consent Order
extending bail limits - to (illegible) to Europe
and the Middle East during period of 5/23/74
and concluding 6/4/74. Ordered that deft. be
permitted to travel during aforesaid period -
CARTER, J.

7- 2-74 Filed one envelope ordered sealed by the Court -
Carter, J. (Placed in vault room 602).

7-25-74 PODELL & MILLER - Filed transcript of record
of proceedings dated 3-5-74.

7-23-74 Filed transcript of record of proceedings,
dated 1-11-74.

7-29-74 Filed Affidavit of William Hoar, pursuant to Court's order of 10/5/73.

7-29-74 Filed Affidavit of William B. Saxbe, in connection with the opposition to the information concerning overhearings, etc.

7-29-74 Filed Govt's Memorandum of Law in support of its motion to depose Ronald Kinsey and Albert Waldman.

7-29-74 Filed Govt. Bill of Particulars.

7-29-74 Filed Govt. Memorandum of Law.

8- 2-74 PODELL & MILLER - Filed opinion #41059 deft. Podell's motion to suppress and to dismiss ct. 10, etc. is in all respects denied for reasons indicated herein.

Deft. Miller's motions for severance, for an order to compel (illegible) are denied. So ordered - Carter, J.

8- 7-74 MILLER - Filed deft's affdvt. and notice of motion to dismiss indictment. ret. 8-16-74

8- 7-74 MILLER - Filed deft's memorandum in support of above motion.

8-20-74 MILLER - Filed Government's affdvt. in opposition to deft's motion to dismiss.

8-20-74 Miller - Filed Government's memorandum in opposition to deft's motion to dismiss.

8-22-74 All defts. - Filed Government's memorandum in support of motion to sequester jury.

8-23-74 Filed Supplemental Memorandum of Law in support of Deft. Martin Miller's motion to dismiss based

on pre-indictment and post-indictment delay.

8-30-74 Filed Memorandum of Law in opposition to the Government's motion to sequester the jury.

9- 3-74 Filed Deft's Memorandum of Law in opposition to Motion to sequester jury.

9- 4-74 Filed transcript of record of proceedings, dated 3-1-74.

9- 9-74 Filed OPINION #41147 - Defendant has filed yet another out of time pretrial motion. In this motion Miller seeks a dismissal of the indictment, contending violation of his Fifth and Sixth Amendment rights of his rights under Rule 48(b) jF.R.C.P. and the rules of this Circuit in respect of the prompt disposition of criminal cases...The motion is accordingly denied So ordered - Carter, J.

9-10-74 Filed ORDER - ORDERED that the defendant Martin Miller be examined by Dr. Michael P. (illegible) Clinical Professor of Urology at the University of Miami Medical School, Miami, Florida and it is further ordered that the results at such examination be reported to the Court and it is further ordered that the U.S.A. pay the cost of such examination and report. CARTER, J.

9-12-74 Filed propose Voir Dire Examination on behalf of Deft. Martin Miller.

9-16-74 BERTRAM L. PODELL and MARTIN MILLER - Jury trial begun as to defendants. Count 7 is dismissed to both Defts.

9-19-74 Trial continued.

9-20-74 Trial continued.

9-23-74 Trial continued.

9-24-74	Trial continued.
9-25-74	Trial continued.
9-27-74	Trial continued.
9-30-74	Trial continued
10- 1-74	Trial continued, and concluded. Defendant BERTRAM L. PODELL (atty. present) withdraws his plea of Not Guilty and pleads GUILTY to counts 1 and 5. Pre-sentence report ordered. Sentence adjourned to January 9, 1975 at 9:30 A.M. Deft. continued R.O.R.
10- 1-74	MARTIN MILLER (atty. present) Withdraws his plea of Not Guilty and pleads GUILTY to Count 1 only. Pre-Sentence report ordered. Sentence adjourned to January 7, 1974 at 9:30 A.M. Deft. continued R.O.R. - CARTER, J.
10- 2-74	Filed Government's Memorandum of Law - Podell's participation in the Conspiracy.
10- 2-74	Filed Government's Memorandum of Law of Admissibility of Portions of Miller's Grand Jury Testimony.
10- 2-74	Filed Govt. Memorandum of Law.
10- 2-74	Filed Govt's Memorandum of Law Judicial Notice of Campaign Contribution Laws.
10- 2-74	Filed Government's Memorandum of Law in support of admissibility of Zorovich Business Card.
10- 2-74	Filed Government's Memorandum of Law - Intent to influence an official act includes payment of money to a public official in return for the use of the influence inherent in office.
10- 2-74	Filed Deft. Bertram L. Podell's Memorandum of Law.

10- 2-74 Filed Affidavit of Joseph Jaffe in opposition to motion for disclosure of surveillance.

10- 2-74 Filed Affidavit of Rudolph Guiliani, Joseph Jaffe and Michael Mukasey, in further support of Government's position that the Court should determine ex parte that the electronic surveillance conducted was legal, etc.

10- 2-74 Filed Memorandum of Law in opposition to Bertram L. Podell's Motion to suppress and to Dismiss Count 10.

10- 2-74 Filed Reply Memorandum of Law in support of Motion to compel witness list.

10- 2-74 Filed Government's Memorandum of Law - official communication.

10- 2-74 Filed Govt's Proposed offer of Kinsey deposition.

10- 2-74 Filed Govt's Memorandum of Law - Admissibility of Statements of Joint Venture.

10- 2-74 Filed Govt's Memorandum of Law.

10- 2-74 Filed Government's Memorandum of Law - Prior consistent statement.

10- 2-74 Filed Government's Memorandum of Law - Witness' Opinion as to illegality is Inadmissible.

10- 2-74 Filed Deft. Bertram L. Podell's Memorandum of Law.

10- 2-74 Filed Govt's Memorandum in opposition to Deft. Podell's motion to dismiss Counts 1, 2 and 3.

10- 2-74 Filed Govt's Memorandum of Law.

10- 2-74 Filed Govt's Memorandum in opposition to Deft. Podell's Motion to dismiss Count 10.

10- 2-74 Filed Order - Determination and Designation of Ronald J.L. Jackson, Legal Technician of U.S. Atty's Office, is, by consent of all parties, hereby designated and authorized to attend at the office of the Clerk of the House of Representatives of the United States Congress, as a representative of all parties to this action to obtain certified copies of said documents the originals of which are in the possession and control of the said clerk. - CARTER, J.

10- 7-74 Filed Govt's Memorandum of Law.

10- 8-74 Filed Deft's Memorandum of Law.

11-12-74 Filed transcript of record of proceedings, dated Sept. 16, 19, 20, 23, 24, 1974.

 Filed transcript of record of proceedings, dated Sept. 27, 30, Oct. 1, 1974.

1-13-75 BERTRAM PODELL - MARTIN MILLER - Filed deft's affdt. and notice of motion for an order permitting defts. to withdraw guilty pleas, ret. on Jan. 9, 1975.

1-13-75 Filed memo end. on above motion --- hearing held on defts. motion to withdraw the guilty pleas of defts. BERTRAM PODELL AND MARTIN MILLER. Motion denied, so ordered, Carter, J.

1- 9-75 MARTIN MILLER - Filed JUDGMENT (atty. Richard Marx present) - the deft. is hereby committed to the custody of the Atty. General or his duly authorized representative for imprisonment for a period of (2) TWO YEARS on Count 1, and on the condition that the deft. be confined a jail type institution for a period of (6) SIX MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended.

Pursuant to Title 18, United States Code, Section 3651. The deft. is FINED \$10,000 fine is to be paid or the deft. is to stand committed. Deft. was advised of his rights to appeal. The open counts are to remain open until the United States Court of Appeals for the Second Circuit hears the matter on appeal or issues a stay. The deft's surrender is stayed pending the filing of a notice of appeal no later than January 24, 1975. Carter, J.

1- 9-75

BERTRAM L. PODELL - (filed JUDGMENT) (atty. James La Rossa and Gerald Shargel) -- the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of (2) (TWO) YEARS on COUNT 1, and on the condition that the deft. be confined in a jail type institution for a period of (6) SIX MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended. Pursuant to Title 18, United States Code, Section 3651. On Count 4, the deft. is FINED \$5,000, fine is to be paid or the deft. is to stand committed. Deft. was advised of his rights to appeal. The open counts are to remain open until the United States Court of Appeals for the Second Circuit hears the matter on appeal or issues a stay. The deft. surrender is stayed pending the filing of a notice of appeal no later than January 24, 1975. Carter, J.

1-10-75

BERTRAM PODEL-MARTIN MILLER - Filed defts' joint memorandum of law.

1-13-75

BERTRAM PODELL - Filed deft's notice of appeal to the USCA from an order denying defts. motion to withdraw his plea of guilty. (copies mailed to U.S. Atty., deft. at home and deft's atty.)

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

BERTRAM L. PODELL, HERBERT
S. PODELL and MARTIN
MILLER,

No. 73 Cr. 675

Defendants.
-----X

INTRODUCTION

1. The defendant, BERTRAM L. PODELL, at all times relevant to this indictment, was a Member of Congress representing the Thirteenth Congressional District in Brooklyn, New York and was an attorney and a partner in the law firm of Podell and Podell, 160 Broadway, New York, New York.

2. The defendant, HERBERT S. PODELL, at all times relevant to this indictment, was an attorney and a partner in the said law firm of Podell and Podell.

3. The defendant, MARTIN MILLER, from 1967 through 1971 was President of Leasing Consultants, Inc. (LCI).

4. Co-conspirator Kenneth G. Burnstine, from 1967 through 1968 was President of, and at times relevant to this indictment, a stockholder in Florida Atlantic Airlines, Inc. (FAAL).

5. Co-conspirator Michael Zorovich, now deceased, from 1967 through 1970, was an officer of FAAL.

6. LCI was incorporated in 1967 and was engaged in leasing, including the leasing of aircraft. In or about March, 1968 LCI began negotiations to acquire FAAL, a Florida based air taxi operator, and in June, 1968 LCI acquired FAAL. On March 22, 1968 FAAL applied to the Civil Aeronautics Board (CAB) for designation to provide regularly scheduled air service over a route between Florida and Freeport, Grand Bahama Island (a route 9 designation).

COUNT ONE

The Grand Jury charges:

1. From in or about March 1968, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, BERTRAM L. PODELL, HERBERT S. PODELL, and MARTIN MILLER, the defendants, and Kenneth G. Burnstine, and Michael Zorovich and David Miller, named as co-conspirators but not as defendants, did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown, to violate Sections 201 and 203 of Title 18, United States Code and to defraud the United States and its departments, agencies and

branches by obstructing, hindering and impairing said departments, agencies and branches in connection with the performance of their lawful governmental functions, including; the lawful governmental functions of the United States Congress and the legitimate representation by its Members of the interests of the United States and their constituents; the lawful governmental functions of the Civil Aeronautics Board (CAB), the Federal Aviation Administration (FAA) and the Department of State in considering and approving routes for international air travel; the lawful governmental functions of the FAA in its determinations as to revocations of operating certificates; and the lawful governmental functions of the Department of State in its relationships with foreign governments.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States of the honest, and unbiased, services of a Member of Congress, by the payment to, and acceptance by, the defendant BERTRAM L. PODELL of money and other consideration in return for the said defendant BERTRAM L. PODELL using his office, prestige and influence as a Member of Congress to intercede with the FAA, the CAB, the Department of State and the Government of the Bahama Islands for the purpose of obtaining

a route 9 designation for FAAL by unlawful and fraudulent means.

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States and departments, agencies, and branches thereof, including the FAA, the CAB and the Department of State by: (1) making and causing to be made to the aforementioned agencies, departments and bodies false statements and corruptly and fraudulently procured representations from the Government of the Bahama Islands and the United Kingdom with respect to the granting of a route 9 designation to FAAL; (2) using the office, prestige and influence of the defendant BERTRAM L. PODELL, through payment to him and others of money and other consideration, to affect the judgment of the aforementioned departments, agencies and branches with respect to, among other things, the granting of a route 9 designation to FAAL.

4. It was further a part of said conspiracy that the defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich would and did give, offer and promise money and other things of value and the defendants BERTRAM L. PODELL and HERBERT S. PODELL would and did ask,

demand, exact, solicit, seek, accept, receive and agree to receive said money and other things of value on behalf of themselves and others, in return for the defendant BERTRAM L. PODELL being influenced in the performance of official acts as a Member of Congress, being influenced to commit and aid in committing and collude in and allow a fraud and make opportunity for a fraud on the United States, being influenced to do and omit to do acts in violation of his official duty, and in return for services rendered by the said defendant, BERTRAM L. PODELL, and others in relation to proceedings, applications, requests for rulings and other determinations, controversies and matters in which the United States was a party and had a direct and substantial interest, before the CAB, the FAA and the Department of State.

5. Among the means by which the defendants and their co-conspirators would and did carry out the unlawful purposes set forth above, were the following:

(a) The defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich, directly and indirectly would and did ask the defendant BERTRAM L. PODELL, and the defendant BERTRAM L. PODELL would and did agree, to use his office, prestige and influence as a Member

of Congress to help secure a route 9 designation for FAAL by fraud, corruption and misrepresentation and otherwise assist FAAL in its dealings with the CAB, the FAA and the Department of State.

(b) The defendant BERTRAM L. PODELL would and did, travel to the Bahama Islands to speak to United States and Bahamian officials, and send letters and make telephone calls to, and attend meetins with, officers and employees of the United States and of agencies and departments thereof, including the CAB, the FAA and the Department of State, for the purpose of affecting, inducing, and pressuring said officials, officers and employees on behalf of FAAL.

(c) The defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich would and did offer, and would and did directly and indirectly pay and caused to be paid, money and other things of value to the defendants BERTRAM L. PODELL, and HERBERT S. PODELL, and others, in the form of payments to the Citizen's Committee for the Reelection of Bertram L. Podell and in the form of fees to the law firm of Podell & Podell, and the defendants BERTRAM L. PODELL and HERBERT S. PODELL would and did agree to receive and did receive money and other things of value in

return for the services described in paragraphs 5(a) and (b) of this count.

OVERT ACTS

In furtherance of, and to effect the objects of said conspiracy, the defendants and co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. In or about December, 1968 the defendant MARTIN MILLER and co-conspirator Kenneth G. Burnstine and others met in Queens County, New York.

2. In or about December, 1968 the defendant BERTRAM L. PODELL engaged in telephone conversations and meetings with representatives of LCI and FAAL and others at his office at 160 Broadway, New York, New York.

3. On or about December 16, 1968, the defendants BERTRAM L. PODELL and MARTIN MILLER, and others met at Kennedy International Airport, Queens County, New York.

4. On or about December 19, 1968 the defendant BERTRAM L. PODELL wrote, signed and caused to be mailed a letter to the CAB in Washington, D.C.

5. On or about December 19, 1968 the defendants

BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for \$10,000 to be mailed from New York, New York to the offices of LCI, in Queens County, New York.

6. On or about January 7, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL received in New York, New York a check for \$10,000 from LCI.

7. On or about March 1, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for \$2,350 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

8. On or about March 17, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for \$3,350 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

9. On or about March 17, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL received a check in New York, New York for \$2,350.

10. On or about April 12, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for \$2,000 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

11. On or about May 1, 1969 the defendants BERTRAM

L. PODELL and HERBERT S. PODELL caused a bill for \$3,000 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

12. On or about May 1, 1969 the defendant MARTIN MILLER delivered to the defendant BERTRAM L. PODELL a check for \$29,000.

13. On or about June 17, 1970 the defendant BERTRAM L. PODELL and co-conspirator Michael Zorovich met with an official of the CAB in Washington, D.C.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970, in the Southern District of New York, BERTRAM L. PODELL, being then a public official of the United States, to wit, a Member of Congress, and HERBERT S. PODELL, the defendants, directly and indirectly, unlawfully, wilfully, knowingly, and corruptly did ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value for themselves and for other persons and entities, including money, namely, \$12,350 received in partial payment of bills totalling \$28,350 from the law firm of Podell & Podell to LCI on behalf

of themselves and others, in return for the defendant BERTRAM L. PODELL: (a) being influenced in his performance of official acts; (b) being influenced to commit and to aid in committing; and to collude in, and to allow, a fraud, and to make opportunity for commission of a fraud, on the United States; and (c) being influenced to do and omit to do acts in violation of his official duty; to wit, in return for the defendant BERTRAM L. PODELL being influenced to use his official position as a Member of Congress to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officers and employees of the aforesaid departments, boards and agencies, and the Government of the Bahama Islands and its agencies, boards, ministers, officials and employees to, among other things, approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with respect to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Sections 201(c) and 2).

COUNT THREE

The Grand Jury further charges:

On or about May 1, 1969, in the Southern District of New York, BERTRAM L. PODELL, being then a public official of the United States, to wit, a Member of Congress, directly and indirectly, unlawfully, wilfully, and knowingly, and corruptly did ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value for himself and for other persons and entities, including money, namely, \$29,000 received in the form of a check payable to the Citizens Committee for B.L. Podell, on behalf of himself and others, in return for the defendant BERTRAM L. PODELL: (a) being influenced in his performance of official acts; (b) being influenced to commit and to aid in committing, and to collude in, and to allow, a fraud, and to make opportunity for commission of a fraud, on the United States; and (c) being influenced to do and omit to do acts in violation of his official duty; to with, in return for the defendant BERTRAM L. PODELL being influenced to use his official position as a Member of Congress to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officers and employees of the aforesaid departments, boards and agencies, and the Government of the Bahama Islands and its agencies,

boards, ministers, officials, and employees to, among other things approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with respect to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Section 201(c) and 2).

COUNT FOUR

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970 in the Southern District of New York, MARTIN MILLER the defendant, directly and indirectly, unlawfully, wilfully, knowingly, and corruptly did give, offer and promise things of value, including money as described in counts two and three of this indictment, to a public official, namely, BERTRAM L. PODELL, a Member of Congress, and to other persons and entities with intent: (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for commission of a fraud, on the United States; and (c) to induce said public official to do and omit to do acts in violation of his lawful duty; namely, with intent to

influence BERTRAM L. PODELL to use his official position to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officials and employees of the aforesaid departments, boards and agencies and the Government of the Bahama Islands and its agencies and the Government of the Bahama Islands and its agencies, boards, ministers, officials, and employees to, among other things, approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with regard to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Section 201(b)).

COUNT FIVE

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970, in the Southern District of New York, BERTRAM L. PODELL, a Member of Congress, and HERBERT S. PODELL, the defendants, unlawfully, wilfully and knowingly otherwise than as provided by law for the proper discharge of official duties, directly and indirectly did receive and agree to receive, ask, demand, solicit, and seek compensation for services

rendered and to be rendered by the defendant BERTRAM L. PODELL and others in relation to proceedings, applications, requests for rulings and other determinations, controversies and otheer particular matters in which the United States was a party and had a direct and substantial interest, before departments, agencies and officers of the United States, namely, an application by FAAL for a route designation then pending before the CAB and the Department of State, and a proceeding for suspension and revocation of FAAL's operating certificate then pending before the FAA and the National Air Transportation Safety Board.

(Title 18, United States Code, Sections 203(a) and 2).

COUNT SIX

The Grand Jury further charges:

From in or about December 1968 up to and including September 24, 1970, in the Southern District of New York, MARTIN MILLER, the defendant, unlawfully, wilfully and knowingly, otherwise than as provided by law for the proper discharge of official duties, directly and indirectly did give, promise and offer compensation for the services described in

Count Five of this indictment, rendered and to be rendered at a time when BERTRAM L. PODELL, the person to whom the compensation was given, promised and offered, was a Member of Congress.

(Title 18, United States Code, Section 203(b)).

COUNT SEVEN

The Grand Jury further charges:

1. From in or about October, 1969 up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, BERTRAM L. PODELL, HERBERT S. PODELL, and MARTIN MILLER, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to violate Sections 1001, 1503, 1510 and 1623 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree that in their statements and representations to the Department of Justice, the Federal Bureau of Investigation, a Federal Grand Jury, and others, they would conceal, falsify and misrepresent the fact that money was paid to the defendants BERTRAM L. PODELL and HERBERT S. PODELL, and others, in substantial part

in return for use by the defendant BERTRAM L. PODELL of his office, prestige, and influence as a Member of Congress, and of his services, among other things to assist FAAL in obtaining a route 9 designation.

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States of, and to impair and obstruct, the lawful governmental functions of the Department of Justice, the Federal Bureau of Investigation, and a Federal Grand Jury to investigate violations of federal law, by interfering with and obstructing said agencies, departments and bodies by deceit, craft, trick and by other means that are dishonest, in that they would and did agree to conceal and misrepresent material facts relating to violations of Sections 201, 203 and 371 of Title 18, United States Code.

4. It was further a part of said conspiracy that the defendants and their co-conspirators would and did, in a matter within the jurisdiction of a department and agency of the United States, to wit, the Federal Bureau of Investigation, United States Department of Justice, make false, fictitious and fraudulent statements and representations and make and

use false writings and documents knowing the same to contain false, fictitious and fraudulent statements.

5. It was further a part of said conspiracy that the defendants and their co-conspirators would and did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice and wilfully endeavor by means of misrepresentation to obstruct, delay and prevent the communication of information relating to violations of Sections 201, 203 and 371 of Title 18, United States Code, by persons to federal criminal investigators.

6. It was further a part of said conspiracy that the defendants and their co-conspirators would knowingly make false material declarations under oath before a Federal Grand Jury.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about October 24, 1969 the defendant HERBERT S. PODELL wrote a letter to Robert Palmer, Esq., 66

West Flagler Street, Miami, Florida 33130.

2. On or about December 6, 1971 the defendant HERBERT S. PODELL made statements to Special Agents of the Federal Bureau of Investigation in New York, New York.

3. On or about December 8, 1971 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in Washington, D.C.

4. In or about December, 1971 the defendant BERTRAM L. PODELL met with the defendant MARTIN MILLER in Miami, Florida.

5. On or about January 10, 1972 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in New York, New York.

6. On or about April 18, 1972 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in Washington, D.C.

7. On or about April 25, 1972 the defendant MARTIN MILLER made statements to Special Agents of the Federal Bureau of Investigation in Miami, Florida.

8. On or about June 22, 1972 the defendant BERTRAM L. PODELL signed a statement in Washington, D.C.

9. On or about May 4, 1973 the defendant BERTRAM L. PODELL appeared and testified before a United States Grand

Jury in New York, New York.

10. On or about May 4, 1973 the defendant BERTRAM L. PODELL met with the defendant MARTIN MILLER in Miami, Florida.

(Title 18, United States Code, Section 371).

COUNT EIGHT

The Grand Jury further charges:

On or about December 6, 1971, in the Southern District of New York, HERBERT S. PODELL, the defendant, in a matter within the jurisdiction of a department and agency of the United States, namely, the Federal Bureau of Investigation, United States Department of Justice, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations to Special Agents of the Federal Bureau of Investigation, to the effect: (1) that his law firm, Podell and Podell, performed no services and did no work with regard to LCI's or FAAL's attempt to obtain a route 9 designation; (2) that BERTRAM L. PODELL, his brother and law partner, was involved in only one transaction for Podell and Podell with LCI to some individuals in the Bahamas; (3) that he, the defendant HERBERT S. PODELL, handled most of the matters for

LCI; (4) that he and his law firm performed legal services involving strictly "local" matters for LCI not related to LCI's or FAAL's attempt to obtain a route 9 designation; (5) that the services rendered under a \$1,000 per month retainer agreement between LCI and the law firm of Podell and Podell did not involve any services or representation before any federal agency; (6) that he doubted that BERTRAM L. PODELL knew about Podell and Podell's monthly bills to LCI; (7) that he had no knowledge of BERTRAM L. PODELL's contacting any government agency or officials on behalf of LCI; (8) that no bills were sent by the law firm of Podell and Podell to LCI for any contacts with any government agencies; (9) that the March 1, 1969 Podell and Podell bill to LCI for \$2,350 was for a trip taken by the defendant HERBERT S. PODELL's father, Hyman Podell, to Puerto Rico on behalf of Kenneth G. Burnstine, and (10) that the allegations in the October 17, 1969 letter from Robert M. Palmer to J.N. Coker, an FAA employee, that LCI had retained Congressman BERTRAM L. PODELL were absolutely untrue, when, as the defendant then and there well knew, said statements were false.

(Title 18, United States Code, Section 1001).

COUNT NINE

The Grand Jury further charges:

On or about January 10, 1972, in the Southern District of New York, BERTRAM L. PODELL, the defendant, in a matter within the jurisdiction of a department and agency of the United States, to wit, the Federal Bureau of Investigation, United States Department of Justice, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations to Special Agents of the Federal Bureau of Investigation, to the effect: (1) that when he was elected to Congress in February, 1968, he set up with his brother and father two separate law firms styled Podell and Podell, one of which did not include the defendant BERTRAM L. PODELL as a partner; (2) that the parties to the \$1,000 per month retainer agreement were LCI and the Podell and Podell law firm of which the defendant BERTRAM L. PODELL was not a member and, he, the defendant BERTRAM L. PODELL, had nothing to do with the retainer agreement and the services performed under this retainer agreement; (3) that he travelled to the Bahamas near the end of 1968 to introduce MARTIN MILLER and others to one George Kates in connection with a "promotion gimmick" for LCI;

(4) that at the time of this trip he was not aware of FAAL and the trip had nothing to do with FAAL; (5) that during this trip he told MARTIN MILLER that MILLER had to discuss any retainer agreement with HERBERT S. PODELL; (6) that any contacts he, the defendant BERTRAM L. PODELL, had with the CAB, CAB officials or other government officials were contacts had because of friendship for a constituent, that he received no money or fees for these services, that they were not performed at a time when he represented LCI, and that neither he nor his law firm received any fees during the time of these contacts; and (7) that a March, 1969 Podell and Podell bill to LCI for \$2,350 contained a \$1,000 charge for a trip to Puerto Rico taken by Hyman Podell, when as the defendant then and there well knew, said statements were false.

(Title 18, United States Code, Section 1001).

COUNT TEN

1. On or about May 4, 1973, in the Southern District of New York, BERTRAM L. PODELL, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York, and inquiring for that

District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations to said Grand Jury.

2. At the time and place aforesaid, the said Grand Jury was conducting an investigation, pursuant to Sections 2, 201, 203, 371 and 1001 of Title 18, United States Code, to determine whether payments made by LCI and FAAL to the law firm of Podell and Podell constituted direct and indirect payments to, and receipts by, the defendant BERTRAM L. PODELL of bribes and constituted a conflict of interest and a conspiracy to defraud the United States, and to determine whether the defendant BERTRAM L. PODELL and others had agreed to conceal and misrepresent, and in fact concealed and misrepresented, the reasons for these payments in their statements to the Federal Bureau of Investigation and to others.

3. It was material to said inquiry to ascertain whether the statements made by the defendant BERTRAM L. PODELL to various agents of the Federal Bureau of Investigation, and to others, completely and truthfully explained the reasons for his services on behalf of LCI and FAAL and the reasons for the money, fees, and other things of value, solicited and received by him and his law firm, Podell and Podell, from LCI

and FAAL.

4. At the time and place aforesaid BERTRAM L. PODELL, the defendant, appearing as a witness under oath did testify falsely with respect to the aforesaid material matters as follows:

Q. But I also want to tell you that we would also weigh very heavily your answers to these questions.

A. Will you advise the Grand Jury that I have made a complete and full statement after three meetings with the Federal Bureau of Investigation some two years ago giving them all of the information they want? I willingly signed the statement. You would further advise the Grand Jury that my office was made available to them. That my staff was made available to them.

* * * * *

Q. With reference to your statement that you brought up, Congressman Podell, is the statement that you made to the FBI a truthful statement?

A. Mr. Guiliani, I always tell the truth.

Or at least as best as I possible (sic) can
I always intend to tell the truth.

Q. Were the statements you made to the
FBI truthful statements, to the best of your
ability, at the time you made them?

A. If I have made a statement I can
assure you, Mr. Guiliani, it is the truth.

* * * * *

THE WITNESS: I want to thank the Foreman
and the U.S. Attorney for allowing me to read
the statement. And the Grand Jury for listening
to it.

About one and a half years ago I was inter-
viewed by the Federal Bureau of Investigation
on numerous occasions in connection with a
matter that occurred in December of 1968.

I provided that Bureau with full and complete
information in a statement which I willingly
signed. That statement is before this jury. It
contains the full, the complete and the entire
story.

* * * * *

Q. Let me ask you this since you have told us about that statement. Is that statement that you gave to the FBI truthful?

A. Every statement that I have ever made has been truthful?

Q. Every statement you ever made to the FBI has been truthful?

A. To anyone.

Q. That would include the FBI?

A. To anyone and everyone is truthful.

Q. I take it that includes the statement you made to the Federal Bureau of Investigation?

A. Of course.

Q. The answer is yes?

A. The answer is, of course.

(Title 18, United States Code, Section 1623).

FOREMAN

/s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

AFTERNOON SESSION

4:10 P.M.

MR. LaROSSA: May it please the Court, on behalf of the defendant Bertram Podell, he hereby offers to plead guilty to certain portions of the first count of the indictment, namely the first full paragraph on page 2, eliminating the Herbert Podell, eliminating Section 201 of Title 18, and eliminating the Department of State.

In addition to that paragraph I am referring now to the means paragraph on page 4 of the indictment, the defendant's plea will cover 5B, again eliminating the Department of State; 5C, eliminating the words "directly and" on the third line of that paragraph; eliminating the name of Herbert Podell throughout the paragraph -- it appears in two instances -- and the last full line of that section; paragraph 5A is to be eliminated as well.

In addition to that, the defendant offers to plead guilty to count 5 of the indictment, again eliminating the Department of State and Herbert Podell.

THE COURT: Is he mentioned there?

MR. GIULIANI: Page 10, your Honor, the bottom.

May I make a statement for the government, your

Honor?

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1
2 THE COURT: Yes.

3 Would you defer your statement for the government
4 until after I ask the questions of Mr. Podell?

5 MR. GIULIANI: Fine. It makes no difference.

6 THE COURT: Mr. Podell, you have heard what Mr.
7 LaRossa said, and what I have to ascertain is what he has
8 indicated you are pleading guilty to; are you, in fact,
9 doing that?

b2 10 DEFENDANT PODELL: Sir, I'm sorry?

11 THE COURT: I'm sorry too.

12 Mr. LaRossa, your counsel, has indicated that
13 you are pleading guilty to certain counts of the indictment
14 with certain deletions. I want to know whether that is,
15 in fact, true, whether you are in fact doing that.

16 DEFENDANT PODELL: Yes, I am.

17 THE COURT: I suppose I don't have to go through
18 the usual litany with you, but I do have to make sure on
19 the record that your plea is being made freely and
20 voluntarily. I am going to ask you a few questions in that
21 regard.

22 First, you are making this plea, you are changing
23 your plea, after these few days of trial, voluntarily, of
24 your own free will?

25 DEFENDANT PODELL: Yes.

1
2 THE COURT: There has been no coercion by the
3 government and no promises by your counsel; is that correct?

4 DEFENDANT PODELL: That's correct.

5 THE COURT: You discussed the matter thoroughly,
6 I gather, with Mr. LaRossa, and you are satisfied with
7 the advice he has given you in regard to what your rights
8 are; is that correct?

9 DEFENDANT PODELL: Yes, your Honor.

10 THE COURT: You were on the witness stand earlier,
11 so I am confident that you are fully aware of what was
12 going on and what is going on at the present time. You
13 are of sound mind and everything else, so that you know
14 what is going on. There is no problem about that?

15 DEFENDANT PODELL: Yes, your Honor.

16 THE COURT: Nor do I have to go into the problem
17 of what you are foregoing since you realize that in view
18 of the fact that we are now aborting the trial you are
19 foregoing your right to trial by making this plea.

20 I think that is sufficient.

21 What I would like to hear from you, tell me in
22 your own words what it is you did in respect to the counts
23 you are pleading guilty to so I can be satisfied that
24 you are, in fact, guilty.

25 DEFENDANT PODELL: If the Court pleases, while

a member of Congress and acting as a lawyer for Florida Atlantic Airlines and paid by Leasing Consultants, Inc., I appeared before various federal agencies, including the CAB, the FAA, and advocated the interests of the said Florida Atlantic Airlines.

I was indirectly compensated through my law firm for these appearances before the CAB and the FAA while a member of Congress.

I did not at the time know that I was violating any law, but I intended to do what I did.

THE COURT: I will accept the plea.

MR. LaROSSA: I think Mr. Giuliani's statement should be read in conjunction with your acceptance of the plea, your Honor. It defines the limits.

MR. GIULIANI: Your Honor, the government is agreeable to taking the plea to count 1, the conspiracy count, and count 5, the conflict of interest count.

It is the government's view that a plea to count 1 encompassing paragraphs 1 and 5B and C, and to count 5 satisfies the interests of justice in this case.

It is the government's position that the plea to the conspiracy count admits that the object of this conspiracy was to violate the conflict of interest law and thereby to defraud the United States.

1 The government also understands that the defendant
2
3 is not in any way admitting the bribery objects of the
4 conspiracy. He is admitting the conflict of interest
5 and the defrauding to the extent that it is meant by
6 "conflict of interest."

7 The two statutes carry maximum penalties of
8 five years and \$10,000 on the conspiracy count, and two
9 years and \$10,000 under the conflict of interest statute,
10 for a total of seven years and \$20,000 maximum.

11 The government feels that the interest of justice
12 is satisfied by taking the plea.

13 THE COURT: I have already indicated I will
14 accept the plea.

15 Is there anything further?

16 MR. GIULIANI: There is one other thing with
17 respect to describing the penalty.

18 Also the conflict of interest law disqualifies
19 an individual from any federal service. That's a penalty
20 that has been prescribed in 203.

21 MR. LaROSSA: In that regard it is important
22 to the defendant to place the date of sentence some time
23 after the 1st day of January, 1975, which I think the
24 normal realm of probation --

25 THE COURT: I have no problem with that.

One thing more. I suppose I ought to put this on the record, Mr. Podell, and that is that the maximum penalty to which you will subject yourself by the plea, I am sure you were aware of that before you pleaded guilty?

DEFENDANT PODELL: Yes, your Honor.

THE COURT: What is an agreeable date? I have no problem about that.

MR. LaROSSA: Some time towards the latter part of the first week in January, if the Court please.

THE COURT: How is January 9th?

MR. LaROSSA: Fine, your Honor.

THE COURT: at 9:30.

MR. LaROSSA: Yes, sir.

THE COURT: Is there anything further?

MR. GIULIANI: Nothing further other than with regard to Mr. Miller, your Honor.

MR. MARX: May it please the Court, at this time I would like to offer to withdraw the plea of not guilty on behalf of the defendant Martin Miller and offer to plead guilty to count 1 of the indictment as it pertains to the conspiracy to commit conflict of interest as was outlined by Mr. LaRossa as those portions of that count apply to Mr. Miller. That would include the conspiracy to defraud as well as to commit conflict of interest. It

1 pgh

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2 is the same plea as to count 1 as the defendant Podell
3 entered.

4 THE COURT: That's it?

5 MR. MARX: That's it.

6 THE COURT: Mr. Miller, I think I am going to
7 have to ask you a few more questions than I was required
8 to ask the congressman.

9 First, I would like to know your age and your
10 education.

11 DEFENDANT MILLER: I am 34, your Honor, and I
12 have had a number of years of college.

13 THE COURT: Since you have not been on the
14 witness stand I will have to ask you the next question:
15 Are you in sound physical and mental health at the present
16 time?

17 DEFENDANT MILLER: Yes, your Honor.

18 THE COURT: You are aware of what is going on?

19 DEFENDANT MILLER: Yes, sir.

20 THE COURT: You are changing your plea of your
21 own free will and accord?

22 DEFENDANT MILLER: Yes, sir.

23 THE COURT: Without regard to any pressures that
24 have been brought on you or threats by the government or
25 promises by your attorney?

DEFENDANT MILLER: Yes, sir.

THE COURT: You obviously realize that if you had not pleaded guilty the government would be required to convince 12 people on this jury of your guilt beyond a reasonable doubt and that you are foregoing that by pleading guilty? Do you understand that?

DEFENDANT MILLER: Yes, sir.

THE COURT: Am I correct it is five years, the maximum penalty, for what you are pleading to and \$10,000 fine?

MR. GIULIANI: Yes, your Honor.

THE COURT: Did you understand that?

DEFENDANT MILLER: Yes, sir.

THE COURT: You have gone over this matter with Mr. Marx and have discussed it thoroughly with him, and you are satisfied with the advice he has given you?

DEFENDANT MILLER: Yes, sir.

THE COURT: I will ask you to tell me in your own words what you did which indicates that you are, in fact, guilty of count 1.

DEFENDANT MILLER: Your Honor, Congressman Podell was introduced to me as a congressman-attorney by Melvin Heiko. I, on behalf of Leasing Consultants, Inc. retained him for his influence. At the time I had no knowledge

1 that I violated any of the laws of the United States. I
2
3 understand now that I did.

4 THE COURT: But you did what you did knowingly
5 and intentionally; is that correct?

6 DEFENDANT MILLER: Yes, sir.

7 THE COURT: Do you have anything to say?

8 MR. GIULIANI: Just basically the same statement
9 that we made with regard to Mr. Podell: The Government is
10 agreeable to taking this plea to the conspiracy count.
11 We understand it to be a plea to conspiracy to violate
12 the conflict of interest section and to defraud the United
13 States, and not a plea to conspire to pay a bribe.

14 THE COURT: All right. Mr. Miller, I will accept
15 the plea.

16 MR. MARX: Thank you, your Honor.

17 THE COURT: What is your convenience for sentence?

18 MR. MARX: I think the same date.

19 THE COURT: January 9th, the same time.

20 Wait a moment. Sentencing has become a longer
21 process. I will probably be on trial at that time. I think
22 I better take just one.

23 I would suggest January 7th at 9:30.

24 MR. JAFFE: Your Honor, just as a matter for the
25 record, does your Honor, as a normal practice having

concluded with each defendant, thereafter take the plea formally on the record or is it sufficient as it stands?

THE COURT: I think it is on the record. I think it is very clear. It is on the record. I don't think there is any problem about it. Both Mr. Podell and Mr. Miller have indicated in their own words that they are pleading guilty.

MR. JAFFE: Very well, your Honor.

MR. GIULIANI: As far as bail is concerned, both defendants are released on their own recognizance. We have no objection to that.

THE COURT: You have no objection to Mr. Miller returning to his home in Miami?

MR. GIULIANI: No, your Honor.

THE COURT: Let's get the jury in here.

(Jury in box.)

THE COURT: Ladies and gentlemen, the delay has been because of some developments in this case, and I am able to advise you that the case has been concluded. The jury will not have to make a decision in that.

I want to thank you for your attentiveness, for your promptness in being here, for your attention to the trial.

I want to say that you have served a useful purpose, a very important purpose, as citizens. The court appreciates

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You are now relieved and may go home.

As to your notes, you can either leave them or
take them with you, since they will be of no use.

If there is nothing further, gentlemen, we
will adjourn.

(Time noted: 4:30 P.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Bertram L. Podell (Resumed)		1339 1390		
Sebastian Leone	1388		1389	

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
61	1410	1411
62	1412	1413
63	1416	1417
63-A	1416	1417
63-B	1417	1419
63-C	1417	1419

LETTER OF MICHAEL B. MUKASEY
ASSISTANT UNITED STATES ATTORNEY

January 2, 1975

Honorable Robert L. Carter
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: United States of America v. Bertram L.
Podell and Martin Miller, 73 Cr. 675 (RLC)

Dear Judge Carter:

Your Honor presided over the trial of this case and is certainly aware of the serious nature of the crimes committed by both these defendants. At the time of sentence the Government will set forth in more detail its arguments concerning the seriousness of these offenses. As Your Honor knows, pursuant to the policy of this office and our agreement with Judge Frankel, we do not recommend specific sentences unless requested by the Court in advance. However, there are several matters which we would like the Court to consider prior to the sentencing proceeding.

Bertram L. Podell held a high position of public trust. By his plea of guilty to two Federal felonies, he admitted that he violated that trust by using the influence of his public office to earn large sums of money for himself as a partner in the firm of Podell and Podell and as the sole beneficiary of the sums expended by the Citizens Committee for the Re-Election of Bertram L. Podell. Podell pleaded guilty to conspiracy to defraud the United States and a substantive violation of conflict of interest statutes. Both of these are serious violations of Federal Law and should be treated seriously at the time of sentence. Similarly, Martin Miller was a knowing and willing buyer of Podell's influence

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to benefit his airline.

Obviously, sentences serve many purposes but in cases such as these the prime purposes are deterrence and the equal administration of the law.

The crimes involved in this case are "victimless" only in the sense that there can be no complaining witness to bring them to the attention of the authorities. When both parties to a corrupt bargain, such as Podell and Miller, are satisfied, the public interest can often be compromised without detection. It is therefore particularly important that others who may be tempted to enter into such corrupt bargains be deterred.

Moreover, the criminal justice system has often been criticized for treating less seriously the crimes of the privileged and powerful than those of the less advantaged. The crimes in this case, involving the betrayal of public trust, are serious ones. We believe the Court's sentence should reflect that seriousness.

Further, as Podell's plea showed, many of his statements to the FBI, to a grand jury in this District, and ultimately from the witness stand, were false. This history of lying under oath is one the Court is fully entitled to consider in imposing punishment.

Obviously, Podell's political career does include substantial public service, much of which is no doubt being brought to the Court's attention. Such service is the very content of a political career. However, the power that Podell had to do good as a Congressman makes all the more serious his abuse of that power.

Finally, the Court should also be aware that although Martin Miller elected after being indicted to stand trial, he did provide valuable information to the Government during the investigation that preceded the indictment. Miller testified

Honorable Robert L. Carter

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before a grand jury in this District to the payments he made to Podell in return for Podell's use of Congressional influence in his behalf. That substantial cooperation should be weighed by the Court in Miller's favor in sentencing him.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
MICHAEL B. MUKASEY
Assistant United States Attorney

cc: James LaRossa, Esq.
Richard Marx, Esq.

MOTION TO WITHDRAW PLEA OF GUILTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 675

BERTRAM L. PODELL and MARTIN
MILLER,

Defendants.

-----X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavits of JAMES M. LA ROSSA and RICHARD B. MARX, duly sworn to on the 9th day of January, 1975, the Indictment, and all the other proceedings heretofore had herein, the undersigned will move this Court before the Hon. Robert L. Carter, United States District Judge for the Southern District of New York, at the Courthouse located in Foley Square, Borough of Manhattan, City and State of New York, on the 9th day of January, 1975 at 4:30 p'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 32(d) of the Federal Rules of Criminal Procedure permitting the defendants to withdraw their pleas of guilty

which were entered in this case on October 1st, 1974; and
for such other and further relief as may seem just and proper
under the circumstances.

Dated: New York, New York
January 9th, 1975

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
BERTRAM L. PODELL
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

By: /s/ JAMES M. LA ROSSA
A Member of the Firm

TO:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New
York
United States Department
of Justice
26 Federal Plaza
New York, New York

RICHARD B. MARX
Attorney for Defendant
MARTIN MILLER
Office and P.O. Address
2951 South Bayshore Drive
Miami, Florida
305/443-4832

AFFIDAVIT IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 675

BERTRAM L. PODELL and MARTIN
MILLER,

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JAMES M. LA ROSSA, being duly sworn, deposes and
says:

1. I am an attorney duly licensed to practice law
in the State of New York with law offices at 522 Fifth Avenue,
New York, New York 10036.

2. I am a Member of the Firm of La Rossa, Shargel
& Fischetti, attorneys for the defendant, BERTRAM L. PODELL,
and am fully familiar with the facts and circumstances herein.

3. This affidavit is submitted in support of de-
fendant's Motion pursuant to Rule 32(d) of the Federal Rules
of Criminal Procedure for an Order permitting withdrawal of
the defendant BERTRAM L. PODELL's plea of guilty.

4. As this Court is aware, the defendant, PODELL,

pleaded guilty on October 1st, 1974 to the charge of committing a conflict of interest in violation of Title 18, United States Code, Section 302 and conspiracy to commit a conflict of interest in violation of Title 18, United States Code, Section 37. This plea came after several days of trial and during the defense case. The plea was the product of many hours of negotiations between attorneys for the Government and your deponent.

5. It should be noted that the actual negotiations included the participation of Richard B. Marx, counsel for the defendant, MARTIN MILLER and my law partner, Gerald L. Shargel. Also present at various times were the defendants, PODELL and MILLER. In the plea discussions, the Government was principally represented by Rudolph Guiliani and Joseph Jaffe.

6. During these many hours of negotiations, considerable attention was devoted to the consequences of the plea and the manner in which the allocution would be presented. Your deponent made it clear to the Government that one of the principle aims in entering a plea would be that the defendant, PODELL, would be placed in a position whereby he could retain his status as a Member of the New York Bar. Without question, this was the most important consideration in the "plea bargaining" and ultimately the withdrawal of his not-guilty plea.

7. During the negotiations, Mr. Guiliani represented not only to your deponent, but to Mr. Podell and Mr. Shargel that the Government would not recommend imprisonment and, further, would take absolutely no position at the time of sentence.

8. Moreover, during the hours that the defendant, PODELL, and his counsel expressed considerable concern with the "Bar Association problem," Mr. Guiliani agreed to testify on Mr. Podell's behalf at any disciplinary proceedings conducted by the Bar Association. The import of his testimony would be to demonstrate to the Referee that there was no bribery involved in this case and, further, that the offenses of which the defendant was convicted did not reflect and corrupt and criminal intent.

9. In a letter dated January 2nd, 1975, the Government has, indeed, taken a position on sentence and has clearly expressed a desire for a substantial term of imprisonment. Furthermore, it is now clear that this letter is incompatible with the proffered testimony of Mr. Guiliani. Testimony of the defendant, PODELL, at an evidentiary hearing would clearly indicate that the defendant relied upon Mr. Guiliani's position

and that it was a critical factor in the inducement of a plea.

10. The situation which now exists is as follows:

First, the Government has breached its promise concerning a position at the time of sentence. Second, in view of the letter of January 2nd, there is no way that Mr. Guiliani can now testify as a witness on Mr. Podell's behalf at a disciplinary hearing.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the defendant's Motion for withdrawal of his plea of guilty be granted in all respects.

/s/ JAMES M. LA ROSSA
JAMES M. LA ROSSA

Sworn to before me this
9th day of January, 1975.

MARION PANOS
Commissioner of Deeds, City of New York
No. 4-1629
Cert. filed in New York County
Commission Expires September 1, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 675

BERTRAM L. PODELL and MARTIN
MILLER,

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

RICHARD B. MARX, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law
in the State of New York and the State of Florida, with law
offices at 2951 South Bayshore Drive, Miami, Florida.

2. I am the attorney for the defendant, MARTIN
MILLER, and am fully familiar with the facts and circumstances
herein.

3. The plea bargaining discussions outlined in the
affidavit of James M. La Rossa are hereby adopted and made a
part hereof.

4. Insofar as representations and promises made to
the defendant, MARTIN MILLER, are concerned, both your deponent
and Mr. Miller were told on a number of occasions by Mr. Guiliani
and by Mr. Jaffe that it was the position of the United States

Attorney's office not to recommend a specific sentence. Both further stated on numerous occasions that they would recommend to the Court neither a suspended sentence nor, on the contrary, would they recommend that the defendant receive a specific jail sentence.

5. While the letter of January 2nd, 1975, by Mr. Mukasey, does in its last paragraph represent the statements made at the plea-bargaining sessions to the effect that it would be brought to the Court's attention as to the cooperation of Mr. Miller, it is respectfully submitted that the prior contents of the letter, drawing the Court's attention to the seriousness of the crimes committed, is inconsistent with and contrary to the intent and spirit of the plea bargaining negotiations. Your deponent submits to this honorable Court that had the United States Attorney's office made known the the defendant, MILLER, that at the same time they were bringing this Court's attention to his cooperation, they would simultaneously urge the Court to severely handle the situation as to a sentence, the plea of guilty would not have been entered.

WHEREFORE, for the foregoing reasons, it is respectfully requested that defendant's Motion for withdrawal of his plea of guilty be granted in all respects.

/s/ RICHARD B. MARX
RICHARD B. MARX

Sworn to before me this
9th day of January, 1975.

MARION PANOS
Commission of Deeds, City of New York
No. 4-1629
Cert. filed in New York County
Commission Expires September 1, 1976.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :
- against - : 73 Cr. 675
BERTRAM L. PODELL and :
MARTIN MILLER, :
Defendants. :

-----x

January 9, 1975
9:30 a.m.

BEFORE:

HON. ROBERT L. CARTER,
District Judge

APPEARANCES:

PAUL J. CURRAN, ESQ.
United States Attorney for the
Southern District of New York
BY: RUDOLPH W. BIULIANI, ESQ.
JOSEPH JAFFE, ESQ.
MICHAEL B. MUKASEY, ESQ.,
Assistant United States Attorneys

JAMES M. LA ROSSA, ESQ.
GERALD SHARGEL, ESQ.
For the Defendant Podell

RICHARD B. MARX, ESQ.
For the Defendant Miller

(In the robing room.)

MR. LA ROSSA: May it please the Court, I move at this time for an adjournment of the scheduled sentence this morning so that I may present to the Court a written motion with respect to the plea that was taken by Mr. Podell and the fact that I respectfully submit that based upon facts that will be submitted to the Court in writing, that the plea should be permitted to be withdrawn at this time.

THE COURT: Well --

MR. LA ROSSA: I will be more specific if your Honor wishes.

THE COURT: I suppose certainly you are entitled to make a motion, Mr. La Rossa, and you are also entitled to submit any facts upon which you feel that your motion is justified and I will give you time to do that.

However, I think what we had better do is to set the time for you to present your motion. Are you joining in this?

MR. MARX: Yes, I am.

MR. GIULIANI: May we object to it?

THE COURT: Yes.

MR. GIULIANI: On the grounds Mr. La Rossa received this letter, as I understand it, the beginning of this week. He knew the sentence was going to be on. We

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2 had less time to prepare that than he had to prepare this
3 motion. He has had plenty of time to think about it.

4 MR. LA ROSSA: May I respond to this? I never
5 received the letter in the mail.

6 MR. GIULIANI: You received it long before I
7 received notice you were going to do this.

8 MR. LA ROSSA: I received it two days ago by
9 accident.

10 MR. MARX: I finally received mine the other day.

11 THE COURT: The point is that I think if Mr.
12 La Rossa has any facts upon which he sent a letter to me as
13 a basis for a withdrawal of the plea, he is entitled to
14 submit it and I will hear it. I am prepared now for us to
15 agree upon a time. I must tell you frankly I have a case
16 outside and it is not going to eat into that period. That
17 case is on from 10 to 5. When can you get your papers
18 here? One other thing, I must say to all of you is I am
19 not going to hear this motion or any evidentiary proof you
20 have apart from your clients being present ready at the
21 conclusion of that, if I so decide, to sentence them.

22 So we are not going to do it separately. I will
23 give you time. I think you are entitled to that. We will
24 then proceed.

25 When is an agreeable period?

67

MR. LA ROSSA: Any day of the week of the 20th would be fine.

MR. GIULIANI: The Government would object to that lengthy delay. This defendant was convicted already two months ago and it seems to me the public interest is served by sentencing him, if he is going to be sentenced, expeditiously. He has known about this since Monday. It seems to me he can make his affidavit by Friday and we can answer it on Monday.

MR. LA ROSSA: I have planned family vacation from Friday morning of this week until the following Saturday. That's the reason I have asked for the week of the 20th. In effect, what I am asking for is one week aside from the extra day, being tomorrow.

MR. MUKASEY: I have ten narcotics defendants on trial that week.

MR. MARX: Judge, I have a special problem also. I am 1500 miles away. I start a trial Monday which is going to go for a week in Fort Lauderdale, Florida. We did not know about this letter until just two or three days ago. When was our phone conversation?

MR. MUKASEY: We had a telephone conversation --

THE COURT: I don't understand, as a matter of fact, what the letter has to do with anything but, in any

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2 event, I may be enlightened about that.

3 MR. GIULIANI: Your Honor, my first conversa-
4 tion with Mr. LaRossa about this was on Monday of this week.
5 Mr. Mukasey's first conversation with Mr. Marx about this
6 was on Monday of this week. It is now Thursday of this
7 week. It seems to me to ask for another week in which to
8 submit these affidavits which are going to come from their
9 clients and from them, there is no one else involved --

10 MR. LA ROSSA: I don't need a week for that. I
11 need a week for the evidentiary hearing.

12 MR. GIULIANI: We can hold a hearing tomorrow.

13 MR. SHARGEL: Tomorrow is Friday.

14 MR. LA ROSSA: I am leaving tomorrow morning at
15 9 o'clock.

16 THE COURT: What is there in the evidentiary proof
17 that has to be prepared? Isn't it a question of fact
18 whether or not certain promises were made to you that were
19 violated?

20 MR. LA ROSSA: Yes.

21 THE COURT: Would that involve your presenting
22 those facts by you and/or your client?

23 MR. LA ROSSA: Yes.

24 THE COURT: I don't know who participated in the
25 negotiations.

MR. LA ROSSA: In some instances both my client and I and in some instances just myself and some of my associates.

THE COURT: Well, quite frankly, I don't think it makes very much difference. I think it is all going to be, one way or another, pressure on me. I have in the week of the 20th I would have to hear it at 9 in the morning or 5 at night or if it is held tonight I would have to hear it at 5.

So I don't really care one way or the other.

Are there any cases?

MR. LA ROSSA: Santobello and cases that follow will be cited.

THE COURT: You mean in terms of promises that have been made and breached?

MR. LA ROSSA: That's correct.

THE COURT: I think I am aware of those cases. I can either hear it tonight at 5, Mr. La Rossa or I will hear it on Monday the 20th at 5 o'clock.

MR. LA ROSSA: Whichever your Honor wants.

MR. GIULIANI: In that case we ask your Honor hear it tonight at 5.

THE COURT: Are you prepared tonight at 5 o'clock? We will do it at 5 o'clock today. I don't like

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to cut -- what we will do is make it at 4:30. I have
a jury here and I hate to keep them like that waiting all
the time, but I don't think they will be unhappy about
going home a half hour earlier.

So we will start at 4:30 today.

MR. GIULIANI: Fine.

THE COURT: I gather Mr. Miller is here.

MR. MARX: Yes, your Honor.

THE COURT: All right.

(Adjourned to 4:30 p.m., January 9, 1975.)

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2 UNITED STATES OF AMERICA

3 vs.

73 Cr. 675

4 BERTRAM L. PODEL &
5 MARTIN MILLER

6 January 9, 1975
4:40 p.m.

7 THE COURT: I don't know, gentlemen, whether
8 this was a good idea or not. I am pretty exhausted. Let's
9 proceed.

10 I have the motion. It would appear to me that
11 what would be required is, as I indicated, I would have
12 a hearing of testimony you want to produce and the Govern-
13 ment wants to produce in regard to this matter.

14 I did have some conversations myself with both
15 sides in regard to this just before the plea was entered
16 and I looked at the transcript and apparently that conver-
17 sation was not recorded.

18 In any event, I was not present during the
19 conversations that took place before I was advised that
20 the plea was going to be made. I therefore, don't know
21 what representations were made.

22 MR. LA ROSSA: I don't allege your Honor has
23 anything to do with the papers or the moving allegation.

24 THE COURT: Well, I am prepared for you to pro-
25 ceed.

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MR. LA ROSSA: Shall we proceed with witnesses?

THE COURT: I suppose what we ought to do first is for you to briefly state your position. I think I have it and I understand it is your position Mr. Podell's plea was based on a representation by Mr. Giuliani and/or Mr. Jaffe that the Government would take no position, would make no representation that Mr. Podell should be imprisoned and, as I now read the papers, Mr. Giuliani indicates if there was any difficulty with the Bar Association, he would testify in his behalf.

MR. LA ROSSA: With respect to what the papers state and nothing more than that.

THE COURT: That the issue before the Court properly was one of a conflict of interest and not bribery, is that correct?

MR. LA ROSSA: That's correct.

THE COURT: And you take the position that the letter which is signed by Mr. Mukasey from the Government to me and exhibits that the Government regards this as a serious infraction is in violation of that pledge or representation?

MR. LA ROSSA: I think they have a right to say it was a serious case or whatever, but I think references in the letter, and I am particularly addressing myself to

page 2 of the letter, to experienced practitioners, references to victimless crimes, criticism of the criminal justice system in paragraph 3, the privileged and powerful being treated differently than those less advantaged, betrayal of public trusts, are quotes that to experienced people suggest that this Court should impose a jail sentence and, frankly, I have had conversations with the Assistant United States Attorneys about this and they don't agree with my contention.

They suggest that this letter leaves everything to your discretion and does not in effect request you to do anything. But I submit to you that I don't think we can put our heads in the sand. I think this letter emphatically requests your Honor to impose a jail sentence and I don't think that there are semantics involved here.

In addition to that, after this type of letter being presented to the Court, I refer now to the aspect of the Bar Association, which I might add where it was the most important reason for the disposition in this case, the only reason.

It was to do everything we could to salvage Mr. Podell's license to practice law, and that was the reason for the negotiations and if you read the Government's affidavit in opposition or the opposition papers that were served

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2 this morning in anticipation of this motion, it is a case
3 nothing was promised whatsoever. There was no result of
4 negotiations, yet your Honor will recall that this took
5 hours. There were hours of negotiations and discussions
6 with respect to this. The words of the plea were agreed
7 upon in advance of the plea being taken, and there was
8 much attention put into what would occur thereafter.

9 That's basically our position.

10 THE COURT: I will hear from the Government.

11 MR. GIULIANI: Your Honor, our position is the
12 following:

13 Number one, the statement in Mr. LaRossa's
14 affidavit or is it Mr. Podell's -- Mr. La Rossa's affidavit,
15 paragraph 7, "During the negotiations Mr. Giuliani and I
16 represented not only to your deponent but to Mr. Podell
17 and Mr. Shargel that the Government would not recommend
18 imprisonment" -- I have something to say about that but it
19 is really the last part of that --

20 "And further would take absolutely no position
21 at the time of sentence" is just a total baldfaced lie.
22 The Government specifically told Mr. LaRossa and Mr.
23 Shargel -- I did, Mr. Jaffe did and Mr. Mukasey did -- that
24 it would at the time of sentence make a strong statement
25 as to the facts of this case and the seriousness of the

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2 crime. We told them that -- I told them that at least
3 two times, Mr. Jaffe did at least once and Mr. Mukasey
4 was present when I said it to them. I don't think they can
5 deny that. I think our letter is exactly that. It is a
6 strong statement about the seriousness of this crime and
7 the facts of the case.

8 We do view it as a serious crime. We have never
9 said to Mr. LaRossa that we don't. We told Mr. LaRossa --

10 THE COURT: Did you think I should be advised about
11 that?

12 MR. GIULIANI: We thought the Government should
13 take a strong position and we told Mr. LaRossa that we would
14 not do as some assistants do, say we had nothing to add to
15 the presentence report in this case.

16 THE COURT: I thought it was the policy of the
17 U. S. Attorney's office not to take any position at the time
18 of sentencing unless requested by the Court. I have
19 certainly not requested that any position be taken.

20 MR. GIULIANI: That's correct, your Honor, and
21 I don't think we have taken a position as to any term of
22 imprisonment that should be given in this case.

23 THE COURT: What do you regard the letter as
24 being?

25 MR. GIULIANI: I regard the letter as an argu-

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ment as to the seriousness of the crime, which we do do normally in any important case. I have done it often. As I understand the agreement --

THE COURT: I suppose the only problem, apart from the agreement, that I have is to representation, I don't regard it as being out of the way for the U. S. Attorney's Office to make a presentation, but it does seem to me that this letter is a letter which does indicate that you are attempting to persuade the Court to a point of view. It seems to me you ought to admit that and be honest about it that that is what you are doing. Whether that has anything to do with whatever representation you made to Mr. Podell, I don't know, but certainly the only purpose of the letter was in order to bring to bear the views of the U. S. Attorney's Office in regard to this matter. I would regard it as being certainly improper if you wanted to do it. It was unsolicited. I didn't want it.

MR. GIULIANI: I don't think I am saying that we haven't made all the arguments that would support the imposition of a substantial jail sentence in this case. I think that is exactly what we did in that letter.

THE COURT: At least let's be honest about where we are.

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1 MR. GIULIANI: I wasn't trying to be dishonest.
2
3 What I was trying to say is there are several things a
4 prosecutor could do at the time of sentence. He could
5 stand up and recommend a specific term of imprisonment
6 and say, "Your Honor, in this case the Government's posi-
7 tion is five years should be imposed."

8 The prosecutor could stand up and say "A jail
9 sentence should be imposed in this case." That is a
10 different position.

11 Thirdly, what we did, the Government can get up,
12 as we often do, and make the arguments that support the
13 imposition of a jail sentence without expressly recommend-
14 ing it. I think that's what we did. I admit that's what
15 we did. I have no trouble with that, but I don't think we
16 expressly recommended a jail sentence.

17 THE COURT: Then I must tell you insofar as I
18 am concerned that the issue is whether or not you in fact
19 made any representation to Mr. Podell that you would not
20 make a representation to me, is the issue, whether or not
21 such a representation was made and it was breached. I am
22 not sure at the present time what the consequences are. I
23 don't regard it as being semantically. If you agree your
24 letter to me was a recommendation, the issue then is whether
25 or not you have made a representation to Mr. Podell and

1 Mr. Miller that you will not do it. That is the issue.

2 MR. GIULIANI: Your Honor, two things. Number
3 one, I don't think our letter is a recommendation of jail
4 sentence. I think our letter puts forth the reasons that
5 would support a jail sentence in this case, but I don't
6 think we recommend it. Two, we didn't promise Mr. Podell
7 we wouldn't do it. So we are willing to go ahead with the
8 hearing and establish that.

9 THE COURT: I say the opposite. I think the
10 letter is a recommendation for a jail sentence and I think
11 if you did make such a promise the question is whether or
12 not not only that you violated it, but what effect that
13 has. That is how I view the situation. Let's proceed
14 with that.

15 MR. GIULIANI: Can I put one other thing in
16 perspective, your Honor?

17 THE COURT: Yes.

18 MR. GIULIANI: Mr. La Rossa made some statements
19 about my testifying at the Bar Association. What I said to
20 Mr. La Rossa and what Mr. Jaffe said to Mr. La Rossa was
21 we would testify if requested to do so at the Bar Associa-
22 tion as to what the record shows Mr. Podell did. It says
23 that the offenses of which the defendant was convicted did
24 not show a corrupt and criminal intent. I never said I

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would testify to that.

MR. LA ROSSA: There is one thing I would like to correct.

THE COURT: I think we can proceed now, Mr. La Rossa. It is your burden at the present time to establish that a representation was made, that there was reliance upon it and it was so material as to affect the plea.

MR. LA ROSSA: May we mark the letter for identification?

THE COURT: The letter to me?

MR. LA ROSSA: Yes, sir.

THE COURT: Yes, sure. I have the original, Mr. La Rossa.

(Court's Exhibit 1 marked.)

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2 MR. LA ROSSA: We are ready to proceed, your
3 Honor.

4 I call Bertram Podell.

5 THE COURT: I think what we ought to do, follow
6 the same procedure.

7 B E R T R A M P O D E L L, called as a witness,
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. LA ROSSA:

11 Q Mr. Podell, do you remember on October 1, 1974,
12 pleading guilty to two counts of the indictment?

13 A Yes, I do.

14 Q And those two counts were conspiracy to commit
15 a conflict of interest and the conflict of interest count,
16 is that correct?

17 A That is correct.

18 Q Do you recall, prior to your taking the plea in
19 that case, having discussions with Mr. Giuliani

20 A Most of the afternoon, yes.

21 Q Where did those discussions take place, Mr. Podell?

22 A There was a little anteroom behind the courtroom.
23 We discussed it in there at length, in the hallway at some
24 time and near the elevator there was a second room, a number
25 of areas.

81

1 hplt 2

Podell-direct

2 Q During those discussions, were you aware that Mr.
3 Giuliani, Mr. Marx and I went in on one occasion to see
4 Judge Carter, during these negotiations?

5 A Yes, that's correct.

6 Q Do you recall having conversations with Mr. Giuliani
7 about what the government's position would be at the time of
8 sentence?

9 A Yes, I do, very well.

10 Q Will you tell us what you were told and who told
11 you?

12 A Mr. Giuliani represented to me in the presence
13 of -- there must have been seven or eight people in the
14 room -- the following: He told me, and I might preface it
15 by saying at this time it was "Rudy and Bert," and "Do you
16 have a match," and that kind of thing.

17 "Look, we are not trying to hurt anybody, we
18 realize these things can happen, and we want to help. The
19 government will take absolutely no position."

20 He did say "We are not permitted to take a position
21 in recommending -- unless the Court requests the government
22 to take a position -- will not take a position with regard
23 to the imposition of sentence, no one wants to see you go to
24 jail."

25 I said, "But the problem here that I'm concerned
about is the fact that my license is at stake and I had

hplt 3

Podell-direct

1
2 already been defeated for my election, that was out the win-
3 dow and the Bar Association was crucial."

4 He said, "I will testify for you at the Bar
5 Association hearing, I will be your witness at the Bar
6 Association hearing, I will testify that there was no bribery
7 involved, and he used the following words, that this was an
8 unwillful conflict of technical conflict of interest and
9 nothing more and "That will save your license." And we
10 discussed the question as to whether or not it was a mis-
11 demeanor under state law and as you know, I had asked you
12 to, you know, check the law, that it was a misdemeanor under
13 state law, and based upon this, I knew that the only thing
14 that I had left for me was to go out and retain my license
15 and support my family.

16 And this is the gravamen, the real crux of my
17 taking the plea.

18 MR. LA ROSSA: I have no further questions.

19 CROSS EXAMINATION

20 BY MR. GIULIANI:

21 Q Mr. Podell, wasn't the real gravamen and the crux
22 of your taking a plea the fact that you had been exposed
23 time after time as having lied under oath during the trial
24 of your case, isn't that right?

25 A Absolutely not.

1 hplt 4

Podell-cross

2 Q How many people were present at this meeting in
3 which you claim that I told you these things you have just
4 testified to? How many people were present then and name
5 them.

6 A I'll not only name them for you Mr. Giuliani,
7 but I'll tell you where we sat and stood.

8 Q I asked you to name them.

9 A I'll go further. We sat --

10 THE COURT: Come, gentlemen.

11 Q Tell me who was present.

12 A I'm reconstructing that.

13 Q I didn't ask you that.

14 THE COURT: Mr. Giuliani, let's stay calm. I
15 can't stand too much excitement at this point.

16 Q You tell me Mr. Podell, who was present?

17 A You were present, Mr. Giuliani, Mr. Jaffee was
18 present. I don't know or remember, because Mr. Mukasey was
19 in and out, whether he was there exactly at the moment or
20 he came back and forth. Mr. La Rossa was present, Mr.
21 Shargel was present, Mr. Mitchell was present of Mr. La Rossa's
22 office, Mr. Marx was present, Mr. Miller was present, and
23 I guess there could have been even someone else in the room,
24 but I do not recall.

25 But all of those individuals were present and we

1 hplt 5 Podell-cross
2 participated in those negotiations.

3 Q Isn't it a fact that this took place around a big
4 table, this conversation?

5 A Yes, yes, yes.

6 Q And isn't it a fact that the subject of that
7 conversation was writing out a statement that we would make,
8 the government would make, at the time that you pleaded
9 guilty, and the statement that you would make when you were
10 asked to give the facts of the case?

11 A Those were also discussed, at the time, yes.

12 Q And isn't it a fact that Mr. Mukasey was the one
13 who drafted or redrafted that statement? Do you recall that,
14 he sat down with a yellow pad --

15 A The first draft was made by you, Mr. Giuliani.
16 Whether or not the final draft was made by Mr. Mukasey, I
17 don't remember, but you in fact dictated to me the very
18 comments about unwillfully which I was to make when I took
19 the plea. It was your suggestion. You said "Say it this
20 way, Bert."

21 Q Isn't it a fact, Mr. Podell, that what happened
22 is, that you presented us with a statement that Mr. Mukasey
23 looked at that statement and said it was unacceptable and he
24 redrafted it and handed it back to you?

25 A There was a time, yes, when Mr. Mukasey I think

1 hplt 6

Podell-cross

2 had gone out and then came back and objected to some part of
3 that original statement.

4 Q And wasn't the objection the fact that you had not
5 included in your draft of the statement an admission that
6 this was a willful violation of the law?

7 A No, no, no, no.

8 Q Was that or was that no what you objected to?

9 A Absolutely not.

10 Q All right. Thank you.

11 And isn't it a fact that during that conversation,
12 around that table with me and Mr. Jaffe there and Mr. Mukasey
13 there, there never was the slightest conversation about what
14 would happen at the time of sentence and that any conversa-
15 tions as to that took place at other times and in different
16 places?

17 A That is not true, you specifically said, Mr.
18 Giuliani, you specifically said, and you informed me because
19 I have no knowledge of criminal law or federal practices,
20 that the government does not take a position with regard to
21 sentencing unless requested by the Court. That is the first
22 time I have ever heard of that in my entire life.

23 I didn't know whether you did or not. But you
24 told me we don't take a position because I had suggested at
25 that time that perhaps you could recommend the fact, as you

1 hplt 7

Podell-cross

2 indicated, that you would not be -- you would make no requests
3 for a jail sentence.

4 I said, "Why don't you say that in court, Mr.
5 Giuliani," and you said "We are not permitted to do so, we
6 take no position."

7 Q I am supposed to have said that at this meeting
8 with Jaffe and Mukasey there?

9 A I don't know whether Mr. Mukasey was there. Mr.
10 Jaffe was there.

11 Q Wasn't he the one that was writing out the state-
12 ment on a pad while the meeting was going on?

13 A The meeting was going on for a number of hours and
14 Mr. Mukasey was coming back and forth. As to whether or not
15 he was there during a specific moment I don't know. He did
16 come in on various times.

17 Q Your testimony is that that meeting in that room
18 took place for a number of hours?

19 A Yes, sir.

20 Q A number of hours?

21 A I would say so, yes, sir.

22 Q With me there for a number of hours?

23 A I would say so, yes, sir. Whether you were there
24 every moment for the number of hours I don't recall, but you
25 did go downstairs, you did try and -- there was a discussion

87

1 hplt 8

Podell-cross

2 as you indicated to me, that the plea of guilty to a conflict
3 of interest. You came back and said I would like to but I
4 can't.

5 Q Isn't it a fact that meeting took all of about ten
6 or fifteen minutes with Mr. Mukasey really being the one who
7 did most of the talking at that meeting and most of the
8 writing?

9 A Oh, no. You did most of the talking, Mr.
10 Giuliani. This was your suggestion and it was your sugges-
11 tion about the Bar Association, "What are you worried about,
12 Bert?"

13 Q It was my suggestion that you should save your
14 license with the Bar Association?

15 A That was the purpose of the entire plea, Mr.
16 Giuliani. You said "You can save your license, isn't that
17 what you really want, you lost the election."

18 I said, "yes, that's what I need, I can't drive a
19 Good Humor truck," remember those words?

20 Q You mean you weren't the one and your lawyer
21 wasn't the one that they want to save your license with the
22 Bar Association, instead of prosecutor --

23 A It was you who said you would come and testify.
24 Do you think I have the temerity to ask you, my adversary,
25 to testify on my behalf? Could I have made that up? It was

88

1 hplt 9

Podell-cross

2 your idea.

3 Q Isn't it a fact, Mr. Podell, what occurred was,
4 that a while before that conversation took place that
5 you have described, that we had a conversation in the witness
6 room which would be across the hall from that witness room
7 and that I walked into that room with Mr. Jaffe at Mr.
8 La Rossa's request and told you that if we were called to
9 testify, the Bar Association, we would testify that you had
10 pleaded guilty to conspiracy to defraud and conflict of
11 interest and not to bribery and that the government considered
12 that as being in full acceptance of what you had done in this
13 case.

14 Isn't that what we said?

15 A Mr. Giuliani, you twist the truth. First of all
16 you never --

17 Q Mr. --

18 A You just listen for once. Mr. Jaffe was never
19 included. This was your idea. You wanted that plea. You
20 made a sucker out of me.

21 Q Mr. Podell --

22 A You told me, Mr. Giuliani, as there is a God
23 above, you told me that you will testify, you would volun-
24 teer and come down before the Bar Association and testify
25 that there was never a bribery involved, that this is an

hplt 10

Podell-cross

unwillful technical conflict of interest and that's all.

I went to see the counsel to the Bar Association, the very next day after this plea or two days later, and I said to the counsel, the former counsel, in preparation for saving --

Q Did I ask you what you said to the former counsel?

A Don't you care really about anything?

Q I don't care what you said to the former counsel. What, Mr. Podell -- strike that.

Mr. Podell, are you saying that a conversation never occurred in the other witness room concerning what I would testify to if I was called to testify at the Bar Association, and in fact what Mr. Jaffe would testify to if I were called?

A I never said there was no conversation. This conversation went on for hours and the one thing that this thread went through the entire conversation was the Bar Association. This was the crux. Mr. Jaffe never volunteered. The only time Mr. Jaffe volunteered was in Seattle when I said, "Over this you want to send me to jail." And you said "Whose going to jail?" remember, in Seattle? "Whose going to jail? No one wants jail."

Q Would you like to go on, Mr. Podell? You can talk for a few more hours, if you want.

50

1 hplt 11

Podell-cross

2 THE COURT: I don't think we are getting very far,
3 are we?

4 MR. GIULIANI: I just have one or two more ques-
5 tions, your Honor.

6 Q I ask you as I asked you at the beginning -- let
7 me strike that.

8 Let me ask you one more question about this:

9 It is your testimony that it was my suggestion,
10 not your suggestion, and not your position and the position
11 of your lawyer, it was my position that we would, the
12 government would try to help you save your license with
13 the Bar Association, that the prosecutor was taking that
14 position, is that right?

15 A Mr. Giuliani, you said you would. You didn't
16 say the government, Mr. Jaffe. You said --

17 Q I volunteered this?

18 A You volunteered to come down and you said "I'll
19 testify on your behalf."

20 Q Isn't that a fact that is the position taken by
21 you and your lawyer, that you were attempting to get us to
22 do that, to take that position and that what we told you we
23 would do was testify, if called, as we had an obligation to
24 do, that you had pleaded guilty just what the record showed
25 you had pleaded guilty to, and we considered that in

1 hplt 12

Podell-cross

2 satisfaction of the crimes you had committed?

3 A Mr. Giuliani, you bring in an awful lot of --
4 you said "I"--Giuliani--"will come down and testify." That
5 is what you said to me. That is the reason I took a plea of
6 guilty because I want to save my right to practice law.

7 Q The reason you took a plea of guilty is because
8 you want to save your right to practice law, not because you
9 were in fact guilty?

10 A I gave you the reason. I took a plea of guilty
11 because I want to save my right to practice law and I was
12 told by you that you would come down and testify and I was told
13 by lawyers that if you can get the U.S. Attorney to come down
14 and say this was an unwillful technical violation, you will
15 get nothing more than a censure.

16 As there is a God above, that's the honest truth
17 and you know it.

18 Q Just as true, Mr. Podell, as your testimony before
19 this trial and the grand jury and --

20 A That is the honest truth as you know.

21 MR. GIULIANI: I have no further questions.

22 THE COURT: Wait a minute, Mr. Podell. You will
23 recall, I think when you took the plea, that I asked you
24 certain questions. Among those were whether you were doing
25 it freely and voluntarily without any promises being made

1 hplt 13

Podell-cross

2 to you by the defense counsel or any coercion by the
3 government and your answer is, as I recall, you were doing
4 it voluntarily.

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Why didn't you tell me at the time
7 before the plea that you were taking the plea because of the
8 representations made by the government?

9 THE WITNESS: If your Honor please, number one,
10 I was told that any of the conversations that went on in the
11 negotiating room were strictly confidential, they were be-
12 tween us, and that no representations can be made by the
13 government or are allowed to be made by the government to
14 an individual, and in effect they never coerced me into it--
15 there is a distinction of course between asking me or
16 volunteering to help me and coercing me -- and in effect,
17 if your Honor pleases, I felt that it would break up the
18 whole agreement and understanding between us.

19 MR. GIULIANI: May I just ask your Honor, who is
20 it that told him that these were confidential negotiations
21 that could not be disclosed to the Court? Who told you
22 that?

23 THE WITNESS: This was discussed in that room.

BY MR. GUILIANI:

Q Who said it to you?

A I don't remember who said it but someone informed me of it.

Q Did I say it?

A I don't know. I couldn't say that for sure.

Q Did Mr. Jaffe say it?

A I don't know.

Q Was I present when it was said?

A You were present most of the time.

MR. GUILIANI: No further questions.

THE COURT: All right, thank you.

MR. LA ROSSA: I call Mr. Giuliani.

R U D O L P H W. G I U L I A N I, called as a witness by the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Before we start, I am aware of the emotion that is involved, particularly by Mr. Podell, but I really can't tolerate and will not tolerate any shouting and screaming. I want this kept muted on both your parts, muted and calm. All right, let's proceed.

hpe

Giuliani - direct

31

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DIRECT EXAMINATION

BY MR. LA ROSSA:

Q Mr. Giuliani, when was the first time you discussed the disposition in this case during this trial with anyone?

A The first time I discussed the disposition of this case around the time of the trial was the day before the trial was to begin when you came to my office and told me could we work out a plea.

Q How about after that?

A I think the next time that it was talked about was immediately after Judge Carter ruled that the Government's case was sufficient, overruled your motions on the Monday morning, which would be the day before the plea.

Q The end of the Government's case you mean?

A That's right and we went down to Mr. Curran and discussed what you wanted to plea to.

Q And I came with you to Mr. Curran's office?

A That's right.

Q And we discussed aspects of this.

A Yes, sir.

Q The day that the plea was taken, how many hours would you say were used in discussions between either you

1 and I or were you present with me, Mr. Podell, Mr. Miller
2 and Mr. Marx? How long would you say you were together
3 with us or anyone of us during the day that the plea was
4 finally taken?
5

6 A To simplify that question a little, I can give
7 you the answer to that if I knew exactly when the plea was
8 entered.

9 You first came up to me after a morning of
10 cross examination during the luncheon recess, while I was
11 sitting there eating a sandwich, toward the end of the
12 recess. That would have to have been around 1:45. The
13 plea, as I remember, was entered at approximately 4:15,
14 4:30.

15 Q That's my recollection.

16 A So that the period of time is between about
17 2 o'clock to 4:30, let's say.

18 Q How much of that time did you spend in our
19 company?

20 A Well, we have to divide up what we mean by "our".
21 I spent sometime in your company talking to you.

22 Q How much time did you spend in my company?

23 A It's very hard to estimate. I would say very
24 little time in the company of your client and told you
25 several times that I didn't want to talk to him, that I

1 hpe

Giuliani - direct

33

2 wanted you to talk to him and to be sort of the inter-
3 mediary but I did spend some time in the company of your
4 client. I would say a total of 20 minutes.

5 Q With Mr. Podell?

6 A Yes.

7 Q How much time did you spend with me?

8 A More than that.

9 Q Those 20 minutes with me?

10 A Those 20 minutes plus maybe six or seven conver-
11 sations where you would come out of the room in which you,
12 Mr. Podell, I assume, and some of the others, were and
13 discuss with me alone sometimes, sometimes with me and Mr.
14 Jaffe, sometimes with me and Mr. Mukasey, various aspects
15 of the plea.

16 Q Were there times when we went to another room?

17 A I don't really understand that question.

18 Q From the room that Mr. Podell was in, were
19 there times that we went to a different room?

20 A Mr. Podell moved. He started off in the witness
21 room -- we were on the 11th floor -- he started off in the
22 witness room to Courtroom 1106, I think it is, and
23 when we were going to have that conversation, where we were
24 going to sit down and work out what the Government was
25 going to say and what Mr. Podell was going to say at the

plea, which was at your suggest, by the way, we moved to what was the Government's witness room during the trial, which I think is the witness room to 1106 so that Mr. Podell was in both witness rooms as far as I know, at different times.

Q And you were too?

A I was in both witness rooms once.

Q Mr. Giuliani, do you remember discussing details of the sentence, what the sentence would be?

A I remember discussing things about the sentence in process. I don't remember -- I'm sorry, I really don't understand the question so I can't answer.

Q Do you remember us talking about how we could minimize any sentence that Mr. Podell got?

A No. I recall your saying that you wanted to save his license several times.

Q I am talking about the sentence now. Do you remember you and I discussing anything about the sentence and then going in and attempting to talk to Judge Carter about it?

A Yes, I do. I recall your saying -- this also had occurred at other times when plea had been discussed -- your asking me several things.

One, whether I knew if Judge Carter would make

1 hpe

Giuliani - direct

35

2 his position known on sentence at the time of the plea, as
3 some judges do and most don't, and I told you I didn't
4 know.

5 Q And you --

6 A There is more to the answer.

7 I told you I think that the Government opposed
8 doing it and you went ahead anyway, and we went up in
9 Judge Carter's robing room, not knowing we were there in
10 order to ask Judge Carter when he would give us some kind
11 of preview of what his sentence would be, something he
12 refused to do.

13 We didn't know we were going in there for that
14 reason, Mr. Jaffe and I. Mr. Mukasey wasn't there.

15 Q You mean you were brought in there surreptitiously
16 by me?

17 A Not being told quite why we were there. We thought
18 we were going in there because Judge Carter was concerned
19 about the delay taking place and wanted to know why it was
20 taking place.

21 We didn't know we were going in there to ask
22 Judge Carter to give some kind of preview of what sentence
23 he would impose and I can remember Mr. Jaffe having some
24 angry words with you as we were walking out of Judge
25 Carter's chambers about that.

99

1
2 Q Mr. Giuliani, did you say to Judge Carter that
3 you didn't want any discussion like that to be had in your
4 presence?

5 A You discussed it with Judge Carter for about
6 three or four minutes as I remember. I remember saying that
7 we were opposed -- the Judge had indicated before we got
8 a chance to register our opposition, that he wouldn't do
9 it and at that point I said we were opposed to the Judge's
10 giving any preview as to the sentence, and there was other
11 conversation also.

12 Q Did we discuss with Judge Carter the theme at
13 that time of whether or not I could save his license to
14 practice law?

15 A Yes, sir, that was discussed. You discussed
16 it.

17 Q Yes, with Judge Carter. Did we talk about the
18 sentences and how I viewed the sentences to be an affect
19 upon whether or not he would retain his license to practice
20 law?

21 A Do you want to ask me what I remember as to what
22 happened?

23 I don't know how to answer that question.

24 Q Did you hear any dsicussion about it?

25 A There was a discussion about your wanting to

1 hpe

Giuliani - direct

37

2 save, I think you called it, his ticket, his license to
3 practice law.

4 Q His ticket, I called it.

5 A Yes, you did. And, at some point Judge Carter
6 said something about thinking this was a signal from the
7 Government -- I'm really confused exactly what he said,
8 I don't recall. I do remember my saying at that point
9 that the Government was opposed to this practice of giving --
10 that it is our position as it is the general position,
11 that we are opposed to the Court giving a preview as to
12 what the sentence would be and this was not a signal of
13 anything, and that Mr. Jaffe said something to the effect,
14 a very similar kind of statement.

15 Q Did there come a time, Mr. Giuliani, when you
16 discussed with me the Government's position at the time
17 of sentence?

18 A There were at least two or three conversations
19 between you and me as to what the Government would do or
20 say at the time of sentence, yes.

21 Q Did you ever tell me, Mr. Giuliani, that the
22 Government would not recommend a jail sentence in this
23 case?

24 A I didn't.

25 Q Are you absolutely sure of that?

101

hpe

Giuliani - direct

38

A I absolutely never told you that the Government would not recommend a jail sentence in this case.

Q A few days ago didn't you tell me on the phone that you don't remember that?

A I'll tell you what I do remember.

Q Did you tell me that?

A I told you what I did remember and I told you what I remembered was kind of confusing, and I'm more than willing to tell you what I remember.

Q Tell me what you remember.

A What I remember saying to you is that the Government would not recommend a specific term of imprisonment in this case, unless asked to do so by the Court. That's what I remember saying.

Q Isn't that the Government's position in every case?

A That is the Government's position.

Q Are you suggesting that I asked you for that, as part of this negotiation?

A No, you didn't ask me for it. I told you that.

Q And you never promised me that you would not ask for a jail sentence in this case, is that your testimony?

A I don't think I ever promised you that I would ask for a jail sentence -- that I would not ask for a jail

1 sentence in this case.

2
3 Q You said I don't think so. Are you absolutely
4 sure you didn't?

5 A The only honest way to answer that, a lot of
6 things were talked about. It is my best recollection that
7 I never said anything like that. It's possible that I said
8 something like, "The Government will not recommend a specific
9 jail sentence." What I meant by that was the Government
10 would not stand up and say, "Put him in jail for three or
11 four years."

12 I didn't mean that the Government would not get
13 up and say, "make arrangements" that can be construed as
14 reasons for people to go to jail.

15 Q Did there ever come a time, Mr. Giuliani when
16 you and I discussed the Bar Association proceeding that
17 would occur after plea?

18 A Yes, sir.

19 Q Did we discuss whether or not this was a misde-
20 meanor and felony under State law?

21 A We did.

22 Q Did we ever discuss the question of how the Bar
23 Association would view this?

24 A Yes, sir.

25 Q Did you offer to testify if we chose to call you

1 hpe

Giuliani - direct

40

2 as a witness in the Bar Association proceeding?

3 A I really don't think I offered to
4 testify, Mr. LaRossa. There was some discussion as to what -
5 well, the way I recall that coming up is, you were having
6 a conversation with Mr. Jaffe about this subject, that I
7 interrupted, and you asked me if I would testify at the
8 Bar Association. I thought you meant for Mr. Podell as a
9 character witness and I told you how could I do that, and
10 you said, you meant to clarify what he had pleaded to so
11 that it didn't look like he had pleaded to bribery. And
12 I told you, "Yes, I would testify to that." And then you
13 asked me --

14 Q Mr. Giuliani --

15 A Let me finish.

16 You asked me if I would come into the witness
17 room with you, the first witness room Mr. Podell was in,
18 and tell that to Mr. Podell. And I said I didn't want to
19 do that. And you said, it would be helpful if I did so
20 I went in the witness room, the first witness room we
21 were in -- that's the first time I talked to Mr. Podell
22 that afternoon -- and you said tell him what you said.
23 And I said, "If called to testify at the Bar Association,
24 we would testify." Mr. Jaffe was with me. We would
25 testify that Mr. Podell pleaded guilty to conspiracy to

1 hpe

Giuliani - direct

41

2 defraud, conflict of interest; he had not pleaded guilty
3 to bribery and as far as the United States Attorneys were
4 concerned that satisfied the crimes he had committed in
5 this case or something.

6 That might not be the exact words but it was
7 something like that.

8 Q Mr. Giuliani, the record indicated everything
9 you stated a moment ago, at the time of the plea.

10 A It probably did, yes.

11 Q No one neded you to go before the Bar Associa-
12 tion and tell them exactly what the record stated, isn't
13 that right?

14 A I don't think that's true, Mr. La Rossa. You
15 were concerned about exactly how the Bar Association would
16 view this and you wanted to make sure there was no con-
17 fusion about it.

18 I think you had a conversation with Mr. Jaffe
19 about a letter being sent to them to clarify the plea.

20 Q We clarified the plea in your statement, didn't
21 we, that it had nothing to do with bribery or words to
22 that effect?

23 A Yes.

24 Q Did you state that to the Judge at the time Mr.
25 Podell took the plea?

1 A I certainly did.

2 Q So there is nothing that needed clarification
3 on the record, is that right?
4

5 A Yes, but I'm not sure at the point we had the
6 conversation we agreed on any of the statements. That
7 conversation took place early on in the conversations you
8 were having with Mr. Podell in the room.

9 We had not as yet sat down and worked out what
10 the Government would say at the time of plea, which was
11 only done later.

12 Q So it is your contention then that you didn't
13 agree to be willing to testify that this crime had its
14 basis in conflict of interest and nothing else?

15 A I told you that I agreed to do. One construc-
16 tion of that would be, yes, that if you call me now to testi-
17 fy at the Bar Association and I was asked to tell the truth
18 about it, I would have to say that Mr. Podell pleaded
19 guilty to a crime that involved conflict of interest and
20 conspiracy to defraud the United States, not bribery, and
21 that was our view of it.

22 Q So it is your contention then, if I may summarize
23 all this testimony, that during all of these hours of
24 negotiations that you just referred to, nothing was agreed
25 upon with respect to the Bar Association or with the

1
2 Government's position at sentence and the only thing that
3 was accomplished was the statement that you read to the
4 Court and the statement that Mr. Podell made in the plea, is
5 that correct?

6 A First of all it's not my contention. It is my
7 testimony. Secondly, the argument you make from that is
8 that you didn't get a terribly awful lot from the plea nego-
9 tiation and I don't think you were in a position where you
10 could ask for a lot. It is true you didn't get an awful
11 lot --

12 Q As it stands then, I didn't?

13 A It is my testimony that you didn't.

14 DIRECT EXAMINATION

15 BY MR. SHARGEL:

16 Q Mr. Giuliani, on October 1st, as part of the
17 plea negotiations we had some discussion, isn't that
18 true?

19 A Yes, it is.

20 Q Isn't it a fact we had discussions, you, myself,
21 Mr. Jaffe on a number of occasions prior to October 1st?

22 A Yes, sir, and many more.

23 Q Would it be true that I requested of you as part
24 of what we were looking for on behalf of Mr. Miller, was a
25 recommendation from your office as to a suspended sentence?

1 A Yes, sir. In fact, that was the sticking point
2
3 in terms of the plea. You wanted us to recommend a
4 suspended sentence for Mr. Miller and we refused to do that.

5 Q Didn't you tell us in the presence of Mr. Miller,
6 I believe Mr. La Rossa and the rest of the people involved,
7 that your office policy is you would make no recommenda-
8 tion at the time of sentencing?

9 A No, I don't recall saying that in front of you and
10 the people you have just mentioned. I recall saying to
11 Mr. La Rossa what I have just testified to.

12 Q Didn't you agree that on behalf of Mr. Miller at
13 the time of sentencing that you would make a statement to
14 the Court as to Mr. Miller's cooperation?

15 A Absolutely and I think we did that in a letter,
16 what we intended to do at the time of sentencing. We told
17 you we had committed ourselves to do that with Mr. Miller
18 a long time ago and whether he took a plea, was convicted
19 after trial if that was the outcome, would make a statement
20 that he had cooperated with an assisted the Government and
21 we intended to do that and have done it.

22 Q Just so that I am sure on this point, it is your
23 testimony that you do not recall any statement being made
24 that you could not take a position at the time of sentenc-
25 ing?

1 A No, that isn't my testimony. My testimony is
2 that I told Mr. La Rossa that at the time of sentence,
3 the Government would not recommend a specific term of
4 imprisonment unless requested to do so by the Court and
5 if requested we would.
6

7 I went and said a lot of other things.

8 Q Are you sure that when you made that statement,
9 that the statement "A specific term of imprisonment" was
10 part of that statement or did you say that it was your
11 policy not to recommend anything?

12 A I'm sure that it was a specific term of impri-
13 sonment.

14 Q You are positive?

15 A Right. I am not positive, just so the recor-
16 is clear, that that statement was made to Mr. La Rossa
17 alone or there were one or two other people present when it
18 was made.

19 I was talking to Mr. La Rossa. There may have
20 been other people present when I said it; people from the
21 Government and people from the defense.

22 MR. SHARGEL: I have no further questions.

23 THE COURT: Anything further?

24 MR. MUKASEY: Yes, your Honor. Some brief
25 cross.

CROSS EXAMINATION

BY MR. MUKASEY:

Q Mr. Giuliani, would you tell us in your own words rather than Mr. La Rossa's, exactly what you did say to anyone on October 1 during the plea negotiation on the subject of the Government's position at the time of sentence?

A Well, the whole thing began at approximately 1:45 when Mr. La Rossa told me that his client wanted to plea.

I told Mr. La Rossa that we had had previous discussions about it, that it would have to be a plea to more than what they had offered last time.

And he said, the defendant was very anxious to plea now and we could work something out.

He then left and there were a series of conversations that took place with Mr. La Rossa coming out of the witness room, which I think was courtroom 1106, where I assume he was talking to Mr. Podell.

I don't really know. I assume Mr. Podell was in there. Those conversations took from between 1:45 and easily 2 o'clock, 2:15, maybe even 2:30.

During that period of time I had absolutely no discussion with the defendant Podell. All my discussions

1
2 were with Mr. La Rossa. There must have been easily five
3 or six or seven. And there were conversations on other
4 subjects as well as the one we are involved in here. There
5 was at least one discussion at that point between me and
6 Mr. La Rossa with maybe other people present, in which I
7 told him what I have just testified to, that the Govern-
8 ment would not make a recommendation as to a specific
9 term of imprisonment, that if we were requested to do so,
10 we would, and I think I discussed with him, but I'm not
11 sure of the exact language, how we would go about making
12 that determination, that that decision is not mine. That
13 it is made by a committee that consists of United States
14 Attorneys, Chief Assistant of the United States Attorneys,
15 the Chief of the Division, and the Assistants involved.

16 I said something like that. There was some
17 interrupted conversation and I said to Mr. La Rossa at that
18 time, or maybe at one of the other times I talked to him
19 after he had come out of the witness room -- I think he
20 said to me, "Well, I guess then if you are not asking you
21 won't make any statement at the time of sentence", or
22 something like that. And I told Mr. La Rossa -- I should
23 say I'm not sure what he said that led into my comment.
24 I'm confident of the truth of my comment. I'm just not sure
25 what Mr. La Rossa said that led me to say this, but what I

111

1 said to him was that the Government would make a statement
2 at the time of sentence, it would not be a situation the
3 Government sitting on its hands as it sometimes does at
4 sentence, and say "We have nothing to add to presentence
5 report," that we would make a statement as to the facts of
6 the case and the seriousness of the crime.
7

8 I think it was after conversations, those one
9 or two conversations took place with Mr. La Rossa that we
10 went in to Judge Carter's chambers, or robing room,
11 rather.

12 Mr. Jaffe and I, Mr. La Rossa, Mr. Marx, maybe
13 Mr. Shargel, I'm not sure, and the Judge.

14 You were, I think downstairs talking to Mr.
15 Curran at the time. We had the conversation that I basically
16 described, there is no need to repeat it. After that,
17 after that conversation with the Judge, in fact sometime
18 after that conversation with the Judge, that we all went
19 into the witness room to courtroom 1105, at my suggestion,
20 because there is a bigger table in that witness room than
21 the other and the suggestion was we would all sit down
22 around the table and work out what we would say the plea
23 entailed and what Mr. Podell would admit to when he was
24 asked to state the facts.

25 As I remember it, either Mr. Podell or Mr.

La Rossa, when we sat down, handed me a written statement, which I looked at and asked you to look at.

You looked at it and said that it wasn't acceptable, you didn't think it made out whatever Mr. Podell was proposing to say at the time, that he was entering his plea, made out a federal crime.

Mr. La Rossa made some remarks to you about using a Yiddish expression, I think, about not having any mercy, and you redrafted that statement and handed it back to Mr. La Rosa and said something to the effect if he doesn't agree to admit what he did or admit the full extent of at least this, he is going to have to go back, or we will go ahead with this thing. And we wouldn't accept anything else.

After that, and this is a short -- maybe more than a short time after, within 20 minutes of that, we had informed the Judge that we were ready to enter the plea. You and I were standing either outside the courtroom or immediately inside the courtroom, waiting for Judge Carter to come on the bench.

As I remember it, the two defendants were sitting at the table. Mr. Marx may have been there or he may not. I don't quite remember where he was. I remember that you and I and Mr. La Rossa had a conversation in which I once

again repeated what I had said to Mr. La Rossa before, basically that we would make no statement as to a specific term of imprisonment at the time of sentence, but that if asked, we would make a recommendation.

That we would not sit on our hands at the time of sentence and say we have nothing to add to the presentence report, but would make a statement and a strong one, as to the seriousness of the crime and the Government's version of the facts of the case.

Q Is that your full recollection?

A Then, after that conversation took place, there was still some delay, and that's when I recall my conversation with Mr. Marx having taken place about -- it was a private conversation in the sense that it didn't involve Mr. La Rossa.

It may have involved either you or Mr. Jaffe, I'm not sure, in which Mr. Marx asked me if we were still going to -- first of all, Mr. Marx had, prior to that, had discussions with Mr. Jaffe mostly, but with me also, about whether Mr. Miller would plead to one count or two counts.

And, Mr. Jaffe and I both agreed that in light of Mr. Miller's cooperation with the Government and in light of our view of his culpability as compared to the Congressman's, that he can plead on one count.

111

1
2 In fact, Mr. Jaffe called the United States
3 Attorney and asked him if he agreed with that. We told
4 Mr. Marx that and Mr. Marx agreed to plead on one count.
5 After that and after my conversation with Mr. La Rossa,
6 Mr. Marx asked me whether we still were going to make that
7 statement that we had promised -- he said Mr. Miller
8 reminded me that you told him a long time ago, before
9 he had been indicted, that you would make a statement for
10 him at the time that he was sentenced, if it ever came to
11 that, whether he went to trial, pleaded guilty, cooperate
12 further or didn't cooperate further and Mr. Jaffe and I
13 both said we had made that commitment, we had no problem
14 and of course, we would do that and we would make that
15 statement even if he had elected to go to trial and had
16 been convicted by the jury.

17 Q Mr. Giuliani, do you recall the phrase not doing
18 something behind Mr. La Rossa's back, coming up and if so,
19 in what connection?

20 A Yes, I'm sorry, I do.

21 In that conversation that took place while we
22 were waiting for Judge Carter to come on the bench, and it
23 may have also been in the earlier conversation, I told Mr.
24 La Rossa that we would not -- because I thought he was
25 concerned about this, I'm not sure why, he may have said

1 he

Giuliani - cross

52

2 something or it may have been a look on his face -- that we
3 would not go behind his back and send to the Judge all sorts
4 of materials about other things -- I don't really remember
5 how we put it -- I remember the case I analogized it to,
6 I don't remember the way I put it.

7 I think the purport of what I said to him was
8 that we would not send or have prepared for the Judge, a
9 memorandum that included a lot of outside things, that the
10 Congressman may have been reputed to have done wrong in an
11 effort to increase his sentence as had been done in some
12 other cases. And I specifically mentioned the case in
13 which it had been done.

14 And, I told him we would not go behind his back
15 and try to solicit the Judge to ask you for a recommenda-
16 tion as to a specific term of imprisonment, but that if we
17 were asked, as sometimes happens, we would have to give one
18 and that it would probably turn out to be a substantial
19 one.

20 There is one other thing -- I remembered before
21 but now it escapes me -- about that.

22 Q Mr. Giuliani, you heard Mr. Podell's direct
23 testimony?

24 A Yes, I did.

25 Q Taking it in the order in which it came, did you

1
2 ever represent to him that on October 1, as part of these
3 plea negotiations that the Government wanted to help him?

4 A No, sir.

5 Q Did you ever represent to him as part of these
6 plea negotiations that nobody wanted to see him go to jail?

7 A No, sir.

8 Q Did you ever volunteer in the words that he indi-
9 cated "I will be your witness"?"

10 A No, sir.

11 Q Did you ever, either in these words or in
12 substance, or in any words that you can think of that sound
13 like it, say that what he had done was an unwilling techni-
14 cal conflict of interest?

15 A No, sir, I didn't say that.

16 MR. MUKASEY: No further questions, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. LA ROSSA:

19 Q Were you calling him by his first name?

20 A No, he was calling me by mine. I'm sure I
21 wasn't calling him Burt. I'm absolutely positive I
22 wasn't calling him Burt.

23 Q Did you hear any of your fellow assistant
24 U. S. attorneys call him Burt?

25 A I doubt it. I really don't know.

117

hpe

Giuliani - redirect

54

MR. LA ROSSA: I have nothing further.

MR. SHARGEL: The defense calls James La Rossa.

J A M E S M. L A R O S S A, called as a
witness, having been first duly sworn by the Clerk
of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. SHARGEL:

Q Mr. La Rossa, you represented Mr. Podell
throughout these proceedings, did you not?

A Yes, sir.

Q Drawing your attention to October 1st, 1974,
you not only participated in these plea negotiations, but
you primarily represented Mr. Podell in these negotiations
with the Government, did you not?

A I initiated most of them.

Q Can you tell us, sir, where these negotiations
took place?

A In the courtroom, in various rooms in the back
of the courtroom, in the hallway that can best be described
that runs along the back of the courtrooms on the 11th
floor, in an anteroom between where the Judge's elevator
is that overlooks a window toward the rear of the building.

They went on for hours.

Q Do you remember specifically how many hours?

118

1 A I think Mr. Giuliani's recollection of the time
2 was correct, except that we discussed it in the morning as
3 well, even before lunch we had some initial discussions, but
4 lunch time basically began the negotiation. I think he is
5 right about that. I think my recollection is about four
6 something, the plea was taken, so it would be somewhere
7 between 1 and 4:15, 4:30 when the plea was taken.
8

9 Most of that time was involved in negotiations
10 leading to the plea in this case.

11 Q There were times when you spoke to Mr. Giuliani
12 alone, did you not?

13 A That's correct.

14 Q There were times when you spoke to Mr. Jaffe
15 alone?

16 A I don't know. I think probably I did but I
17 really can't recall speaking to him alone. I might have.

18 Q There were times when you spoke to Mr. Giuliani
19 and Mr. Podell was present.

20 A That's correct.

21 Q There were times you spoke to Mr. Giuliani and
22 I was present.

23 A I would say more often than not you, Mr. Marx,
24 Mr. Giuliani, myself and at times Mr. Jaffe. I can't
25 tell you every time everybody was together, but the majority

1 hpe

La Rossa - direct

56

2 of the cases it was more than Mr. Giuliani. I can't tell
3 when Podell was there or you were there at a given instance,
4 but during mose of this time almost everybody was there.

5 Q Do you remember a time when the people that you
6 just mentioned were present in the witness room to the
7 courtroom and sat around the table and had discussions?

8 A Absolutely.

9 Q And do you remember times when discussions with
10 Mr. Giuliani were in the presence of myself, Mr. Marx,
11 Mr. Miller, Mr. Mitchell? Do you remember that?

12 A I don't know if Mr. Marx was there. Quite
13 frankly, I don't recall. But, everyone else, yes.

14 Q And you remember the time that was described by
15 Mr. Giuliani, when a draft and a redraft was made of the
16 allocution or proposed allocution.

17 A Yes.

18 Q Do you remember Mr. La Rossa, any conversation
19 with Mr. Giuliani, regarding any recommendation which the
20 Government would make or not make at the time of sentence?

21 A Of course.

22 Q Wouldyou describe that for us, please?

23 A These negotiations didn't last three minutes. I
24 was demanding or requesting --

25 MR. JAFFE: I am going to object, your Honor.

1 hpe

La Rossa - direct

57

2 Can we have an answer to the question?

3 THE COURT: All right.

4 A Yes.

5 Q What did Mr. Giuliani --

6 THE WITNESS: You want me to just stop with a
7 yes, I assume, your Honor?

8 THE COURT: Yes.

9 Q During the time you had these conversations on
10 this subject, what did Mr. Giuliani say to you and what
11 did you say to Mr. Giuliani?

12 A Initially I wanted Mr. Giuliani to make a recom-
13 mendation that the Government would not oppose a suspended
14 sentence in this case, which he rejected out of hand.

15 But that's the way the thing began, as far as
16 the sentence is concerned. It resulted in an agreement
17 that the Government would make no recommendation in this
18 case as to sentence. It is true that Mr. Giuliani received
19 the rights at the time of sentence to submit the facts to
20 the Judge. That portion I do recall even though the
21 affidavit doesn't state it. But that he would make no
22 recommendation that the defendant be sentenced to jail; but
23 merely to give the facts as the Government viewed them in
24 this particular case.

25 There was no discussion about arguments to the

121

Court. That was one of the things that was agreed upon.
And to me it was a strong factor.

Q Did you relay these conversations to Mr. Podell?

A Either I related them to him or he heard them
because we were in and out continually. I know I must have
related them and I'm convinced he heard them as well.

Q Sir, in your opinion as Mr. Podell's attorney --
strike the question.

I withdraw the question. You had conversations
with Mr. Podell regarding this plea, did you not?

A Many.

Q This lasted also over several hours, did it not?

A Yes, sir.

Q During your conversations with Mr. Podell,
while acting as his attorney, was it your opinion that
these representations of the Government induced Mr. Podell
to take the plea and did he rely on these representations?

A Certainly.

Q Do you remember having conversations with Mr.
Giuliani while Mr. Jaffe was present or not present while
Mr. Podell was present or not present, concerning his status
as a member of the New York Bar?

A Yes.

Q Do you recall having conversations with

Mr. Giuliani on the subject of disciplinary proceedings?

A Yes, sir.

Q Can you tell us, sir, what he said to you and what you said to him regarding this subject?

A At this point we had worked out the plea, so that it would be one that Mr. Podell would plea to my making the statement that he didn't realize that he was violating the law at the time. There was no intention to violate the law at the time. However, he intended -- I forget the exact word, I'm paraphrasing -- intended the consequence of the acts or whatever. I was still concerned about the broadness of the indictment and I was concerned with how the New York State Bar Association would treat the disciplinary proceeding.

Mr. Giuliani agreed that he would testify if we had chosen to testify, that the conflict of interest was the basis of the crime and that conflict being one count was the basis of the conspiracy count as well. And Mr. Giuliani, even in the statement that the Government made at the time of the plea, repeated that, and I am paraphrasing again, and said that this is the gravamen of the case, that the conspiracy to defraud arose only because there was a conflict of interest and that there was no bribery involved.

123

1 hpe

La Rossa - direct

60

2 And this is the technical violation he was
3 willing to testify to if called to the Bar Association,
4 and it was those two factors that we were mostly concerned
5 about.

6 Q Mr. La Rossa, how long have you been a member of
7 the New York Bar?

8 A Since 1958.

9 Q Is there any question in your mind as you sit
10 here now that these two promises were made by Mr.
11 Giuliani?

12 A Absolutely no question.

13 Q Is there any question in your mind as you sit
14 here now that Mr. Podell relied on these promises on
15 entering his plea of guilty?

16 A He did.

17 MR. SHARGEL: No further questions.

18 CROSS EXAMINATION

19 BY MR. GIULIANI:

20 Q Mr. La Rossa, is it your testimony that I said,
21 Mr. Giuliani said, this was a technical violation of the
22 law?

23 A I used that phrase because I couldn't tell you
24 honestly what your exact words were, Mr. Giuliani.

25 Q As you sit there, do you recall my saying that

124

1 this was a technical violation of the law, these two
2 federal felonies.
3

4 A I'm not sure whether you used those exact words,
5 but the import, what I'm trying to do is paraphrase. I
6 certainly can't remember the exact words you used or the
7 exact words you used and frankly, I don't remember who was
8 present during 99 percent of the conversations.

9 Q Is it your testimony that these things that I am
10 supposed to have said was the main reason that your client'
11 pleaded guilty that afternoon?

12 A The main reason?

13 Q The so-called promise that the Government would
14 make no recommendation of a jail sentence?

15 A The main reasons?

16 Q Yes.

17 A They were certainly important reasons, yes.
18 Whether they were the main reasons or not is another point.
19 Certainly there was a decision made with respect to the con-
20 duct of the trial as well.

21 Q First let me clarify what it is that I was
22 supposed to have said. What would you state, once again,
23 so that I understand it I'm supposed to have told you the
24 Government would do at the time of sentence?

25 A You would not recommend a jail sentence, Mr.

Giuliani.

Q It is not true, I take it, even by what your testimony is, that I ever said to you that the Government would take absolutely no position at the time of sentence, is that right?

A Yes, you said that.

Q I said those words to you that the Government would take absolutely no position at the time of sentence?

A If I didn't use those exact words it was words that certainly would come to that conclusion and I honestly can't tell you what your exact words were, Mr. Giuliani. But in addition to that, you said you would present the Court at the time of sentence with the Government's version of the facts.

Now, is that taking a stand at the time of sentence? I guess we are talking about semantics at that point.

Q No, we are not. I'm asking you, number one, you admit that I told you that I would make a statement at the time of sentence as to the facts of the case. Didn't I also say that I would --

A First of all I don't admit it. I testified to it.

Q Do you also admit that I said that I would argue

the seriousness of the crimes?

A No, sir.

Q You claim I didn't say that?

A That's correct. You didn't say it Mr. Giuliani. What you told me was, you would present the Government's version of the facts to the Court at the time of sentence and it's true that you said you would not say I'm relying on the probation report as you testified to, but you were going to make a statement to the Court about the Government's version of the facts at the time of sentence.

Q But at the same time I told you "I would take absolutely no position at the time of sentence" according to your sworn affidavit, is that right?

A That's right. That --

Q Thank you, Mr. La Rossa. That's the answer.

THE WITNESS: May I answer that, Judge?

THE COURT: All right, go ahead.

A You said that on one particular occasion when I asked you to recommend that he receive a suspended sentence, Mr. Giuliani.

Q I said the Government would take absolutely no position at the time of sentence.

A That's right, you wouldn't do that and further, you would not take a position with respect to the sentence.

Q Your client testified to a conference that took place in the witness room, I think courtroom 1106, at which I am supposed to have said the Government wanted to help him, Mr. Podell.

Do you recall my ever saying that in your presence?

A I honestly don't recall that. There was talk about helping him out with the Bar Association. There was talk about not initiating the proceeding. I think you had agreed you would not initiate the proceeding by writing a letter. Whether or not we talked about these in terms of reference that you were not trying to hurt him at the Bar Association or even as a matter of fact helping him at the Bar Association, I don't know whether those words were actually used.

Q Do you recall my saying at that meeting as your client testified, that "No one wants to see you go to jail." That I said that to your client, Mr. Podell?

A I heard you say that, yes.

Q And you heard me say, I assume as your client testified --

A I don't think you said that. I think you said, "I don't have any desire of seeing you go to jail."

Again, we are talking semantics. I assume the

1
2 answer yes means the --

3 Q I told Mr. Podell according to your testimony
4 that I have no desire to see him go to jail, is that right?

5 A I don't think you used those words. What you
6 said was, I don't care, or words to the effect, I'm not
7 interested in your going to jail and I'm not going to do
8 anything that is going to help you go to jail because
9 he was concerned about going to jail that day.

10 Q This statement I was supposed to have made, was
11 made during that conference around the table in the witness
12 room to 1106, is that right?

13 A I don't know. I honestly couldn't tell you
14 where 5 percent of those conferences occurred at this point.
15 I can recall that they happened and the substance of them
16 but I really can't tell you whether it was in that room or
17 outside.

18 Q When I told Mr. Podell according to your testi-
19 mony that "I don't want to see him go to jail" who else
20 was present besides you, Mr. Podell and myself?

21 A I don't know. Mr. Shargel, might have been
22 there, I'm not sure. Mr. Marx might have been there.

23 Q According to your client, I told him during this
24 meeting that took place in the robing room to courtroom 1106,
25 where he claims that statement was made, that I will be your

witness, that this was an unwilling technical conflict of interest.

Did I ever say that?

A Again, we are talking about semantics.

Q I am not talking about semantics. Did I say that or --

A Those exact words?

Q Yes.

A I don't know.

Q Isn't it a fact that during what you describe long negotiations for this plea, that the main issue was what Mr. Podell would say at the time Judge Carter asked him to state the facts of the case?

A I'm sorry you will have to repeat the first part of that.

Q Isn't it a fact that the main issue that was involved at the time that you were discussing this plea with us, was what Mr. Podell would say at the time the plea would be entered as to the facts of the case?

A No.

I think we spent more time what you were going to say.

Q By what we were going to say, you mean the statement the Government was going to make?

130

1 hpe
2 A Yes, sir.

3 Q And both these statements, the statement Mr.
4 Podell was going to make and we would make were written
5 out?

6 A That's correct.

7 Q Isn't it a fact that it was either you or Mr.
8 Podell when we entered this room that presented us with
9 what we might call the first version of what Mr. Podell
10 proposed to say, that that was not prepared or dictated
11 by me?

12 A I have no recollection Mr. Giuliani whether I
13 prepared the first version or you did or we did it together.
14 I haven't the slightest idea at the time.

15 Q Isn't it a fact that the main objection the
16 Government had to that version that was prepared by Mr.
17 Podell was the fact that he had left out of it any admis-
18 sion of an intentional action on his part at the time these
19 crimes were committed? That was the objection that Mr. --

20 A I don't know what you mean.

21 Q Mr. Podell had written out something that said,
22 I think --

23 A Are you saying he wrote it out or I wrote it
24 out?

25 A I think it was handed to me by him.

1 hpe
2 A I can answer that. I don't think he wrote out
3 anything. Anything that was written out for him most
4 probably was written by me.

5 Q And that first version contained a statement
6 by Mr. Podell that while he was performing these activities
7 for Florida Atlantic Airlines, his law firm was being
8 reimbursed, do you recall that, and Mr. Mukasey objected
9 to that?

10 A Honestly, no. I don't have a clear recollec-
11 tion. I do recall Mr. Mukasey objecting to a number of
12 things that we did, and I don't recall that exact part of
13 it. If you said it happened, I wouldn't dispute it.

14 There were some discussions, I recall, about
15 whether or not the statements that were prepared covered
16 all four aspects of the plea, and I know that we made
17 corrections, but I honestly don't recall what they were.

18 Q Without going into the details of it then,
19 if you don't recall them, is it an accurate statement that
20 what actually happened was that Mr. Podell or you handed
21 the Government a statement as to what he was going to say
22 at the time of the plea, the Government objected to that
23 and basically we wanted a stronger statement from him?

24 A Do you want to know what my recollection if it
25 is?

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La Rossa - cross

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2 Q I would like you to answer the question, first.

3 A I can't answer it.

4 Q Thank you.

5 A It didn't happen in the way you suggested, I
6 can tell you that. If you want me to explain --

7 Q You tell me.

8 A My recollection is you and I sat down and wrote
9 the statement. I'm not absolutely sure of this but just
10 you and I and we fooled around with some sort of state-
11 ment. Then you took the statement and I either showed it
12 to Joe Jaffe or Mr. Mukasey and one of them commented it
13 wasn't sufficient in one aspect or another. I'm not
14 absolutely sure that was the statement Mr. Podell read off
15 at the time of the plea or you were reading, but my recol-
16 lection is as to one of them we prepared it together, you
17 and I, sat down and wrote it out.

18 Q Let me just make sure I'm clear on these final
19 couple of things, Mr. La Rossa.

20 It is your testimony that I told you and Mr.
21 Podell the Government would not recommend imprisonment, is
22 that right?

23 A Would not recommend imprisonment or jail sen-
24 tence, whatever words were used.

25 Q Isn't it a fact that what I told you was that the

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Government would not recommend a specific term of imprisonment?

A No.

Mr. Giuliani, that is the rules in this office, that the Government will not recommend a specific term of imprisonment unless the Judge asks and I have known that for 15 years.

Q And the point of that all, the point of your saying that and your writing that in your affidavit and the point of your arguing that is, that it would be silly for you to have obtained that in negotiation since you had that already, we were forced to do that anyway, so we were giving away nothing?

A I didn't say you were forced to do it. That was one of the major items of negotiation and I called you immediately after seeing your letter and told you that, didn't I?

Q The point of your statement that the Government is required to do that anyway, if you knew that at the time you were negotiating, which I'm not sure you did, was --

THE WITNESS: Is that a question, Judge?

MR. GIULIANI: Strike it.

Q The point of your saying that the Government was merely agreeing to something that it would have to agree

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La Rossa - cross 71
with anyway is to try to point out that these negotiations
couldnot have taken place this way because you obtained
nothing from it, isn't that right, nothing that you were
entitled to anyway.

A Is this a question? I don't understand it.

Q I am asking you, isn't it a fact that when you
said that you could never have just agreed to my promising
your client that we would not recommend a specific term
of imprisonment, that you would not have agreed to that
because that's all we do anyway, we never go any further
than that?

A That's not true. There are cases where you do
go beyond that. I said the normal practice.

Q There are cases we go beyond that, isn't that
a fact and that's exactly what you were negotiating for,
that we not go beyond that, isn't that correct?

A Absolutely not, Mr. Giuliani, and you know it.
You know exactly what we negotiated.

Q I do and I have testified to it, Mr. La Rossa.

MR. GIULIANI: I have no further questions.

MR. SHARGEL: I have no further questions.

THE COURT: Do you recall a conversation at
some part of this time when you believe that you and Mr.
Marx and Mr. Giuliani and Mr. Jaffe were in my robing room?

1 THE WITNESS: Yes, sir.

2 THE COURT: Do you recall the substance of that
3 conversation?

4 THE WITNESS: Yes, sir.

5 THE COURT: What is your recollection of it?

6 THE WITNESS: My recollection is my intention of
7 coming into the chambers was to try and get your feeling on
8 how you would react to a plea as far as the sentence was
9 concerned, and you informed me very shortly -- I think I
10 said to you that the new rules provided for us to get a
11 glimpse of it from the Judge, if you desired to do so and
12 you told me that was not your practice and you would not
13 do it in this case.

14 THE COURT: Do you recall telling me, or am I
15 incorrect, that one of the reasons for the negotiation of
16 plea was because of the fact that Mr. La Rossa was con-
17 victed of bribery and would be automatically --

18 THE WITNESS: Mr. Podell.

19 THE COURT: I'm sorry. That he would automati-
20 cally be disbarred and if he pleaded to the conflict of
21 interest, it depended upon --

22 THE WITNESS: Yes, sir.

23 THE COURT: Do you recall that?

24 THE WITNESS: Yes, sir. It was a strong motiva-

1 ted fact. There is no question about it. I think we also
2 talked about the length of the sentence in relationship to
3 the Bar. We had gotten some capsule information who are
4 expert in this field, that the length of the sentence
5 would also have been some factor.
6

7 THE COURT: You indicate the length of the
8 sentence, although I don't recall anything specific about
9 it -- it's vague in my own mind.

10 THE WITNESS: I don't think we talked about
11 anything specific.

12 THE COURT: At no time during that conversation
13 was there any -- I don't recall MR. La Rossa -- but in that
14 conversation, concerning any matter before me at the present.
15 I don't recall any reference being made to that, was there?

16 THE WITNESS: None at all, no, sir.

17 MR. GUILIANI: May I add one more question,
18 your honor?

19 THE COURT: Yes.

20 BY MR. GUILIANI:

21 Q Mr. La Rossa, you claim that I made these
22 promises that were very important causes of your client's
23 pleading, is that correct? These were important factor
24 in his decision to plead?

25 A Yes, they were.

Q Would you consider them very important factors in his decision to plea?

A They were certainly important. How high up the line I gauged them I can't tell you.

Q And you are a very experienced lawyer, both prosecutor and defense lawyer now, is that right?

A I have spent my entire life doing this, yes.

Q And your client had been given all these promises by the Government you claim, and yet at the time he entered this plea he told the Judge no promises had been made to him, isn't that a fact?

A That's correct.

MR. GIULIANI: Thank you.

THE COURT: Thank you, Mr. La Rossa.

Is there anything further?

MR. MARX: Your Honor, I think if Mr. Miller would testify at this point, it would be brief.

THE COURT: He has a right to testify, if he cares to, by all means.

Take 4

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hplt 1

Miller-direct

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M A R T I N M I L L E R, called as a witness,

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being first duly sworn, testified as follows:

4

DIRECT EXAMINATION

5

BY MR. MARX:

6

Q Mr. Miller, you have heard the testimony this

7

afternoon, have you not?

8

A Yes, I have.

9

Q On October 1, 1974, you entered a plea of guilty

10

to Count 1 of the indictment, did you not?

11

A Yes, sir.

12

Q Were you present during the time that plea

13

negotiations were going on with Mr. Giuliani, Mr. Jaffe,

14

Mr. La Rossa and myself?

15

A I was present during a number of the conversa-

16

tions, not all of them.

17

Q Were you present when any conversations were taking

18

place concerning the position that the government would take

19

at the time of sentencing?

20

A Yes, I was.

21

Q And do you recall who made any statements on

22

behalf of the government concerning what their position

23

would be at the time of sentencing?

24

A I recall two specific conversations, that I was

25

present at, concerning those discussions, one of which I

hplt 2

Miller-direct

participated in, the other of which I was really just a spectator.

Q As to the conversation you participated in, could you tell the Court?

A Yes.

There was a conversation between Mr. Jaffe, Mr. Giuliani, myself and you, where I believe I said to Mr. Giuliani, or reminded Mr. Giuliani, of a promise or what I felt was a commitment made to me prior to the indictment, where he had said to me that he felt if I testified honestly before the grand jury, he would go to bat for me should there be an indictment or conviction or sentencing.

And I asked Mr. Giuliani if he would reaffirm that commitment and he said he would.

Q Do you recall me asking Mr. Giuliani what position the government would take as to the recommendation of the suspended sentence at the time of sentencing?

A Yes, I do.

Q What did Mr. Giuliani say at that time?

A Mr. Giuliani said the government would not take a position with regard to sentencing.

Q Did you hear Mr. Giuliani say anything to the effect that at the time of sentencing, the government would make a strong statement to the Court?

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hplt 3 Miller-direct

A The only thing I heard was Mr. Giuliani say that the government would not take a position with regard to sentencing.

Q And in your pleading to the indictment, was the fact that Mr. Giuliani made that statement to you, that the government would not take a position at the time of sentencing, an important fact in you making that plea?

A Yes, it certainly was, along with his statement that he would "Go to bat for me."

THE COURT: Do what?

THE WITNESS: Go to bat for me, your Honor, speak up in my behalf.

MR. MARX: No further questions.

CROSS EXAMINATION
BY MR. GIULIANI:

Q Mr. Miller, just one or two questions.

Isn't it a fact that what I told you was, in this conversation that you say took place between you, me, your lawyer and Mr. Jaffe being present, that we would live up -- something to the effect we would live up to the commitment we had made to you to bring your cooperation up to the sentencing judge, isn't that what I said to you?

A In substance, I believe it was, yes.

Q In Court's Exhibit 1, which I have a copy of --

hplt 4 Miller-cross

have you read the letter of January 2, 1975, which is Court's Exhibit 1?

A No, sir, I have not.

Q Let me read to you the last paragraph of that:

"Finally, the Court should also be aware that although Martin Miller elected after being indicted to stand trial, he did provide valuable information to the government during the investigation that preceded the indictment.

"Miller testified before the grand jury in this District to the payments he made to Podell in return for Podell's use of Congressional influence in his behalf; that substantial cooperation should be weighed by the Court in Miller's favor in sentencing him."

Do you consider that lives up to the commitment we made to you?

A Sir, let me answer that by saying in the conversation I have had with Mr. Marx, Mr. Marx advises me that in the context of some of the other statements in the letter, that he felt it did not.

MR. GIULIANI: No further questions.

THE COURT: Thank you.

MR. LA ROSSA: One more witness, your Honor.

Mr. Shargel.

GERALD SHARGEL, called as a witness
herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LA ROSSA:

Q Mr. Shargel, are you my law partner?

A I am.

Q Were you present during the trial of Mr. Podell?

A I was.

Q Were you assisting me in that trial?

A I was.

Q Did there come a time on October 1st when you
participated in discussions that were had with Mr. Giuliani?

A I did.

Q Were you present during any of the discussions
that were had with Mr. Giuliani with respect to the
government's position at the time of sentence?

A Yes, I was.

Q Will you tell us, if you can recall, what you
heard Mr. Giuliani state the government's position would be
at the time of the sentence?

A The import of what he said was that he would take
no position at the time of sentence.

MR. GIULIANI: Objection, your Honor, to the
"import" of it. That's his conclusion. We would like him to

1 hplt 6 Shargel-direct
2 testify rather than give his conclusions.

3 A I'll correct it. To the best of my recollection
4 Mr. Giuliani told me in your presence and alone that he
5 would take no position at the time of sentence, and that
6 he would not recommend a term of imprisonment, he would not
7 recommend that a jail term be imposed, and further, I
8 specifically recall Mr. Giuliani telling me in your presence,
9 and in fact in Mr. Podell's presence, that he was not
10 interested in seeing Mr. Podell going to prison.

11 Q Were you present during any discussions where dis-
12 ciplinary proceedings were discussed?

13 A I was because that was a prime concern during
14 negotiations, that is, Mr. Podell's status as a member of
15 the New York Bar.

16 Q Were you present when there was any discussion with
17 Mr. Giuliani about his testifying, at a disciplinary pro-
18 ceeding?

19 A I was.

20 Q Will you tell us what you recall he stated?

21 A I recall several conversations during that after-
22 noon as to what sanctions would or would not be imposed as
23 a result of the plea that Mr. Podell was offering or tendering
24 in this case.

25 I believe that there were some discussions or a

144

hplt 7

Shargel-direct

suggestion made, I believe by you, Mr. La Rossa, that a letter be written by Mr. Giuliani regarding the government's position and that the crimes which were to be pleaded to, didn't require or involve a specific criminal intent.

Mr. Giuliani rejected this letter and said that no such letter can be written on behalf of the government. At that time Mr. Giuliani said, and I might add gratuitously, that he would testify at a Bar Association proceeding to that effect, that these crimes did not involve specific criminal or corrupt intent.

The question was raised, and I specifically remember this, Mr. Giuliani went one step further and said that he would so testify, whether at the time of the proceeding he was with the government or had resigned from the government and had gone into private practice, that even in that event he would be willing to appear as a witness in Mr. Podell's behalf.

MR. LA ROSSA: I have nothing further.

CROSS EXAMINATION

BY MR. JAFFE:

Q Mr. Shargel, when you say you were present and Mr. Giuliani and you had conversations where in words or substance you say Mr. Giuliani said the government would take absolutely no position at the time of sentence, and I take it

145

1 hplt 8

Shargel-cross

2 that is your testimony, is it not --

3 A That is.

4 Q Who else was present?

5 A Mr. La Rossa was present. I believe this topic
6 was approached when Mr. Podell was present. You must under-
7 stand, Mr. Jaffe, and I would like the Court to understand,
8 that this subject was broached on more than one occasion.
9 I don't think there was any one subject not discussed on
10 just one occasion. This was stated to me, in Mr. La Rossa's
11 presence, stated in the presence of Mr. Podell, in the
12 conference room, adjacent to the judge's elevator, stated to
13 me in the courtroom and conversations in the hallway.

14 There were many conversations, I think, at that
15 time in the back by the judge's elevator simply because
16 all parties wanted to avoid the press.

17 Q Did Mr. Giuliani, as you describe his other
18 comments, gratuitously say, just off the top of his head,
19 the government would have no position at the time of sentence?

20 A My reference to the gratuitous offer was with
21 regard to his testimony before the Bar Association. He did
22 not gratuitously suggest that the government would take
23 no position, because that was an essential element in this pro-
24 cess and this was something that was undoubtedly solicited
25 by us.

146

1 hplt 9

Shargel-cross

2 Q Were you soliciting from Mr. Giuliani or from the
3 government a commitment that the government would say
4 absolutely nothing and stand mute?

5 A I do not recall.

6 Q Isn't it a fact --

7 A May I finish my answer?

8 Q Go ahead.

9 A I do not recall the conversation testified to by
10 Mr. La Rossa concerning submission of a factual statement.
11 That may have happened in my presence and it may not have.
12 What I was primarily concerned with, and I believe all par-
13 ties in the defense team were primarily concerned about,
14 was the question of whether jail time would be recommended.

15 Q Isn't it a fact that you were specifically con-
16 cerned, and you were trying to get a commitment from the
17 government, that the government would not at the time of
18 sentence get up and say, "Your Honor, the government sug-
19 gests a term of imprisonment of X years"?

20 A I don't think that was suggested, I don't think that
21 was our aim, and I don't think that was contemplated by
22 us or articulated by you. When I say you, I mean the
23 government.

24 Q Isn't it a fact that you were present at conversa-
25 tions, or you were told about conversations wherein the

hplt 10

Shargel-cross

1 the government told you, meaning the defense team, that
2 the government had every idea, had every purpose and had every
3 intention to argue the fact of this case to the judge at the
4 time of sentence?
5

6 A I do not recollect, and my testimony is that there
7 was no reference to argument. I am not delving into seman-
8 tics but I believe the word was "submission," and frankly,
9 Mr. Jaffe, I don't recall that conversation.

10 Q Do you recall a conversation in which you were
11 told or your co-counsel were told the government would not
12 sit on its hands at the time of sentence?

13 A I don't remember the words or substance.

14 Q Is it your testimony then that the conversation
15 did not take place?

16 A Not in my presence.

17 Q Do you recall being present in the courtroom on
18 the eleventh floor where Congressman Podell was tried just
19 prior to the time that Judge Carter entered, came onto the
20 bench and the Congressman took his plea, having a conversa-
21 tion with myself, where we discussed a previous case in
22 which a plea had been taken wherein the government had
23 agreed to make absolutely no statement at the time of
24 sentence, and being told my me that in this case the govern-
25 ment was not going to stand on its -- or sit on its hands,

1 hplt 11

Shargel-direct

2 and make no statement?

3 A Mr. Jaffe, I don't recall that conversation.

4 My testimony is, it did not take place; and one
5 step further, I do recall having a conversation with you in
6 the courtroom where I said to you that you know that this is
7 not a corrupt Congressman in the generic sense of the word
8 and you agreed with me.

9 Q I agreed with you that Mr. Podell was not a
10 corrupt Congressman?

11 A In that sense of the word, that's right, that is
12 my testimony.

13 And, I have had that conversation not only with
14 you, but with Mr. Giuliani in your presence.

15 Q Do you recall the case United States versus Edward
16 Atanasio?

17 A I do.

18 Q Do you recall discussing that case on the first
19 of October when Mr. Podell was about to plead guilty, just
20 when Judge Carter was about to come back to the courtroom?

21 A So there is no mystery, you were the prosecutor
22 and I was defense counsel. I do recall casual references
23 made to that case during the course of the proceedings. I
24 believe the casual reference made to that case is every time
25 I meet you because of the unusual nature, of course I am

exaggerating, but I do not recall that.

If I may amend my answer, I do not recall reference to United States against Atanasio, in the context of this case. Absolutely not.

Q Is it your testimony that your understanding of the government's position on October 1st, prior to Podell entering his plea, was that the government was going to agree with Podell and with Miller, that the government would make absolutely no statement at the time of sentence?

A The words I remember, Mr. Jaffe, were that the government would take no position. Would not recommend jail. That's what I remember and that's my testimony.

Q Your testimony is that the government said they would take no position or is it the government said there would be no jail?

A Both, because the conversation was on more than one occasion.

Q And it was important to you, I take it, because you kept asking over and over again, that the government take that position, is that correct?

A It was very important as far as I was concerned. It was important to me, it was important to the Congressman. It was one step below what we ultimately wanted, and that was for you to take the position that you would not oppose

1 hplt 13

Shargel-cross

2 a jail sentence, oppose a suspended sentence which is in
3 accordance with the rules of criminal procedure.

4 Q Isn't it a fact what you were seeking was to get
5 the government's commitment to take a position recommending
6 no jail, and when Mr. Giuliani said we would take no position
7 the government was refusing to make a commitment for no
8 jail sentence for your client --

9 A Absolutely not.

10 Q You said just a few moments ago that you had a
11 conversation with me and a conversation with Mr. Giuliani,
12 and in that conversation with each of us, we both told you
13 that Congressman Podell was not corrupt, is that correct?

14 A You didn't gratuitously come over to me and say
15 "Congressman Podell was not corrupt." The conversation or
16 conversations as best I recall them, were as follows:

17 There were many hours that court was not in
18 session, many times we had discussions. There were times
19 we made reference, whether Mr. Giuliani was present, I
20 think these conversations were on more than one occasion,
21 with you and with Mr. Giuliani, conversations in which we
22 discussed Mr. Podell's voting record.

23 There were conversations in which you or Mr.
24 Giuliani or both of you said that you didn't quarrel or find
25 any fault with Mr. Podell's voting record. At that time I

1 hplt 14

Shargel-cross

2 stated to you, and I'm sure this was on more than one
3 occasion, that Mr. Podell is not a corrupt Congressman in
4 that sense of the word and that you know that.

5 Q Mr. Shargel, you said that it was exceedingly
6 important, and I believe your client said it and your
7 co-counsel said it, that is, your law partner, that as far
8 as you and he and they were concerned, it was of utmost
importance that the government's position with regard to what
10 it would or would not do at sentence, was very strong and
11 very high and the most important thing on your mind or one
12 of the most important things, is that correct?

13 A Let me answer it this way, if I may:

14 Mr. Podell as far as I was concerned, individually,
15 had two objectives in pleading guilty.

16 The first was to retain status as a lawyer.

17 The second was not to go to jail.

18 So, in terms of relative importance, I would place
19 a great deal of emphasis on those two aspects.

20 Q Mr. Shargel, would you explain to us why it is if
21 that was so important, that when at the time of the elocu-
22 tion of the plea, his Honor asked whether any promises were
23 made by either defense counsel or by the government, your
24 client, Mr. Podell, not only failed to bring that out but
25 specifically denied it?

A Because you know, as well as anyone else in this room, that that's the normal course of proceedings and an agreement, an agreement that Mr. Giuliani be a prospective witness was an agreement that was man to man, whether he be government attorney or an attorney in private practice.

THE COURT: Mr. Jaffe and Mr. Shargel, aren't we going around --

MR. JAFFE: I have nothing further, your Honor.

THE COURT: Anything further?

MR. LA ROSSA: No, sir.

THE WITNESS: Do you have any questions?

THE COURT: I don't think I have had any conversations with you, so I don't have any question.

MR. GIULIANI: We have two witnesses, your Honor.

The government calls Joseph Jaffe.

J O S E P H J A F F E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Jaffe, how are you employed?

A I am an Assistant United States Attorney in the office of Paul Curran, United States Attorney for this district.

hplt 16

Jaffe-direct

Q Directing your attention, Mr. Jaffe, to October 1, 1974, were you on that day engaged in the trial of United States of America against Bertram Podell and Martin Miller?

A I was.

Q Specifically directing your attention to the events we are testifying about today, did there come a time at approximately 1:45 on that day that you were informed that Mr. Podell was seeking a plea of guilty?

A Approximately at that time, yes.

Q Had there been some prior discussions as to Mr. Podell's pleading guilty with Mr. Podell's lawyer, Mr. La Rossa?

A Yes. Those discussions extended over the history of the case.

Q Directing your attention to October 1, 1974, how did you first find out about this?

A I believe I found out that situation from you.

Q And tell me in your own words, relevant to what we are discussing here, what you can remember of the conversations with Mr. La Rossa, with Mr. Shargel, with Mr. Podell, if any, and with me, concerning what if anything the government would do or say at the time of sentence.

A I can't remember the specifics of the conversations. I can tell you the substance, the best I can recall. To the

1 hplt 17

Jaffe-direct

2 best of my recollection, we had conversations concerning
3 sentence in the witness room for Courtroom 106, in the area
4 outside the witness room at 1105, in the courtroom and I
5 also believe in the pretrial -- that is the robing room, just
6 prior to the plea with Judge Carter.

7 To the best of my recollection, in sum and sub-
8 stance, I recall hearing you say, I recall myself saying at
9 various times, that the government in this case --

10 Q Mr. Jaffe, when you say I said and you said, who
11 do --

12 A I recall making statements to Mr. La Rossa and
13 Mr. Shargel. I recall you making statements to Mr. La Rossa,
14 in Mr. Shargel's presence. I have no recollection of you
15 having a discussion concerning sentence in the presence of
16 the defendant Podell.

17 Q Tell us as best you recall it, what I said and what
18 you said to Mr. La Rossa and Mr. Shargel about sentence.

19 A I recall a statement by you, in which you said
20 that the government was going to argue the facts of this
21 case and the seriousness of this case at the time of sentence
22 and in substance that the government was not going to stand
23 mute.

24 I recall saying to Mr. Shargel specifically that
25 in this case we were not going to sit on our hands. I

155

hplt 18

Jaffe-direct

recall saying to Mr. La Rossa something to that effect, and I also recall, although I could be wrong, that at the time we had our conference in the robing room with Judge Carter, Mr. La Rossa had gone in there and asked us to come in and had asked Judge Carter, solicited from Judge Carter, whether or not the Judge would give him an indication as to the sentence he would impose.

I remember that during the course of those discussions, the Judge asking whether or not the government's agreement was some kind of signal. I recall your objecting to any indication.

Either you said or I said because I wasn't satisfied, that the government wanted to be free to make argument at the time of sentence and the acceptance of the guilty plea to those two counts was not a signal as to what would happen.

Q Do you recall any other discussions with Mr. La Rossa or Mr. Shargel concerning what the government would do at the time of sentence?

A The only thing I can say in answer to that, I recall in substance that we were taking a position which we made known to them that we were not going to be made to stand mute; that if we were asked by the Court we would recommend a specific sentence; that if we were not asked by

1 hplt 19

Jaffe-direct

2 the Court, we would not try to induce the Court to ask us to
3 ask for a specific sentence.

4 In substance, what we said to them was, we
5 would take no position in terms of recommending a specific
6 sentence and from my prior dealings with the lawyers who
7 practice in this building, when the government says in words
8 or effect, in words or substance, we will take no position
9 with regard to the sentence to be imposed and not ask for
10 a specific sentence, it means just that. It in no way cur-
11 tails the government from arguing the facts of the case,
12 seriousness of the case and anything that's relevant.

13 The only thing that we said to them was that we
14 would not encourage the Court to ask us for a specific
15 sentence and we would not make a specific sentence recommen-
16 dation, specific sentence meaning jail sentence, jail time,
17 unless we were asked to do so.

18 Q Did there ever come a time when I said or you said
19 to Mr. Podell, Mr. Shargel or Mr. La Rossa, that the govern-
20 ment would not recommend imprisonment?

21 A To my knowledge, no.

22 Q Did any of us every say, any of us from the govern-
23 ment, myself, yourself or Mr. Mukasey, ever tell Mr. Podell,
24 Mr. Shargel or Mr. La Rossa, that the government would "take
25 absolutely no position at the time of sentence"?

157

1 hplt 20

Jaffe-direct

2 A We not only didn't say that, we said to the
3 contrary. We said we were not going to be put in a posi-
4 tion of having to sit on our hands.

5 Q Did you ever tell Mr. Shargel that you considered
6 that Congressman Podell or you agreed with him that
7 Congressman Podell was not a corrupt Congressman?

8 A I have no recollection of saying anything like
9 that and I can't imagine why I would.

10 Q Mr. Podell testified that I had many hours of
11 conversations with him on October 1, 1974. Isn't it a
12 fact that those conversations in the main took place in the
13 courtroom on cross examination?

14 A Yes.

15 Q How many hours of conversation did I have with
16 Congressman Podell on this question of plea?

17 A My best estimate of that would be somewhere
18 between a half an hour and forty-five minutes. There
19 would be times you would be present. I would say actual
20 conversation between you and Congressman Podell was limited
21 to less than a half an hour period and that was during the
22 time that we were discussing whether or not the Congress-
23 man was going to admit to the \$41,000 that he received.

24 Q Was that the basic topic of those conversations
25 with Mr. La Rossa and Mr. Podell?

1 hplt 21

Jaffe-direct

2 A Your participation with Mr. La Rossa and Mr.
3 Podell, that is, direct conversations with Mr. Podell,
4 had to do with what the Congressman was going to say on
5 his allocution and what he was going to admit.

6 Q Were you present at my conversation with Mr.
7 Podell and Mr. La Rossa?

8 A To the best of my recollection, they were in the
9 witness room and 1105, if that's on the lefthand side of
10 the building facing the --

11 Q Did I ever tell Congressman Podell that the
12 government wanted to help him?

13 A Not to my recollection.

14 Q Did you ever tell him that?

15 A I doubt it.

16 Q Did I ever tell him or did you ever tell him or
17 did anyone else from the government tell him that no one
18 wants to see him go to jail?

19 A It doesn't sound like anything that was said.

20 Q Did anyone from the government tell him that we
21 would -- did I tell him or did you tell him or Mr. Mukasey
22 that any of us would be his witness at the Bar Association,
23 and this was merely a technical violation of the law?

24 A You said that you would appear as a witness for
25 him, that is correct, you did say that.

159

Q In what context did I say that?

A You said you would appear as a witness and you would testify that Mr. Podell, when he pleaded guilty, pleaded guilty to conflict of interest, to conspiracy to defraud the United States by conflict of interest, and you would explain what that meant and you would explain, as you did to the Judge at the time of the allocution that the government accepted that and that the Congressman specifically didn't plead guilty to bribery.

MR. GIULIANI: No further questions, your Honor.

CROSS EXAMINATION

BY MR. LA ROSSA:

Q Mr. Jaffe, did you hear any discussion about, or requests made of either you and Mr. Giuliani that the government would make a statement to the Court not to oppose a suspended sentence? Did you hear any discussions about that?

A On October 1st?

Q Yes, sir.

A I believe we were asked if we would do that and we refused to do that.

Q Was there any question in your mind when you were asked that?

A No, no question. You asked us to recommend to

100

1 hplt 23

Jaffe-cross

2 the Court that the Congressman receive a suspended sentence
3 and we refused.

4 Q Is there any question what the government's
5 position would be at the time of sentence?

6 A I don't know how to answer your question. I don't
7 understand it.

8 Q Let me try it again. Was there any discussion,
9 Mr. Jaffe, that the government would not recommend a jail
10 sentence but merely give the Court their version of the
11 facts?

12 A There was a discussion, to answer your question,
13 in which it was stated, more than once, in substance --
14 these are not the exact words -- that the government would
15 not recommend a specific jail sentence, unless it was
16 requested to do so by the Court.

17 I believe it was also pointed out, in one of those
18 conversations, that that would be pursuant to an agreement
19 that existed between the Court and the United States
20 Attorney's office, that the government would be free to
21 argue not only the facts of the case, but the seriousness
22 of the case, and to make any arguments from the facts.

23 That's what was said to you.

24 Q So you deny every hearing, either Mr. Giuliani
25 or you yourself state that the government would not request

hplt 24

Jaffe-cross

a jail sentence?

A We stated to you, Mr. La Rossa, the only way to answer your question --

Q Can you answer that yes or no?

A Not the way it's phrased, no, sir, I cannot.

Q If I understand you correctly, no one said to either myself or Mr. Podell, that the government would not ask for a jail sentence at the time of sentence?

A If that is the whole question, the answer is, nobody asked that statement or made that statement in those words.

Q Or in other words, that means the same thing?

A I don't understand your question.

Q Is there any question in your mind that that letter that was sent to Judge Carter strongly requests Judge Carter to give substantial jail term in this case?

A There is a large question in my mind whether that letter is a recommendation of a jail sentence, yes, sir. If you want me to fully complete my answer, my answer is in terms of the experience that I have had and I know you to have had, that letter is merely an argument of the facts of the case and is not a recommendation of a jail sentence, meaning the government saying "Put this man in jail for X days, X weeks, X years, X months." That letter is an

1 hplt 25

Jaffe-cross

2 argument of the facts of the case, seriousness of the case,
3 which you were informed before the plea the government
4 was going to make.

5 Q Do you think you had a right to request Judge
6 Carter to give a substantial jail term in this case?

7 A Do I think we have a right to ask that?

8 Q Do you think that you had a right to do so?

9 A I don't follow your question. You are talking
10 in the past tense of something that --

11 Q Do you think you have a right, right now, to do
12 so?

13 A To say to the Judge in our opinion this man
14 ought to be sent for X years, or X months?

15 Q Or, sent to jail for a substantial time, without
16 giving a specific.

17 A In those words, no, sir.

18 Q You don't think you have the right to do that?

19 A No, I don't.

20 Q Is that based on any conversation you had with me
21 or Mr. Podell?

22 A Yes. It is based on a conversation with you. I
23 don't recall any conversation with Mr. Podell, but I recall
24 it being said to you by Mr. Giuliani and I believe also by
25 myself, and that is we agreed we would not specifically

hplt 26

Jaffe-cross

recommend a jail sentence unless the Court asks us to do so.

Q So, if this letter requests a jail sentence that was sent to Judge Carter, you agree that you would have violated the spirit of that agreement; is that correct?

A No, sir.

Q You don't agree?

A I don't agree that this letter in any way can be construed, as we ordinarily use the term, to be a letter recommending a jail sentence.

Q My question to you, sir, is that if it could be construed that the United States Attorney's requesting Judge Carter to give a jail sentence based upon this letter that would have violated the spirit of that agreement, would it not?

A I don't think so, no.

Q Then you think you would have had the right to --

A What you want me to do is give you a yes answer to a question that doesn't warrant a yes answer. You are assuming facts that do not exist. My testimony to you is that you and we understood that the government would not say "We recommend a jail sentence," and you having practiced know the government routinely in any type of serious case argues facts of the case, but when the government

1
2 agrees it will not recommend a jail sentence it will not
3 say this man should be sent to jail.

4 In my experience, and your experience, it leads
5 me to believe at the time we had these conversations you very
6 well understood that that was the practice and meaning and
7 this letter in no way violates that agreement.

8 Q So, Mr. Jaffe, assuming that I believe this letter
9 was requesting Judge Carter to give a jail sentence in no
10 uncertain terms, then your testimony is that if I were
11 correct in that, you, the sender of the letter, would have
12 violated the agreement you made with me, is that correct?

13 A That is incorrect.

14 Q Please explain it to me.

15 A I will explain it once again, Mr. La Rossa. As an
16 attorney practicing in this court, having knowledge of the
17 practices in this court, and also having knowledge of your
18 practice in this court although I in no way claim to know
19 everything about you, it is my belief that you and other
20 attorneys who practice here under that, when the government
21 says it will not recommend a jail sentence, it means that
22 the government will not get up and say "Send this man to
23 jail," that the government is free to argue from the facts
24 of the case, and the seriousness of the case, and that is
25 exactly what we have done.

1 hplt 28

Jaffe-cross

2 Q Am I correct in assuming then, that you know that
3 you or Mr. Giuliani said to me that you would not recommend
4 a jail sentence in this case; is that correct?

5 A You want to limit the words of something that is
6 just not the context nor the statement that was made to you.
7 The statement that was made was that the government will not
8 specifically recommend a jail term or a specific jail term
9 which means the government would not say, "Your Honor, impose
10 a jail term," albeit one day or seven years.

11 That is what it meant to me and I believe that is
12 what it meant to you and that is the area we were dealing
13 in.

14 MR. LA ROSSA: I have nothing further.

15 REDIRECT EXAMINATION

16 BY MR. GIULIANI:

17 Q Mr. Jaffe, in your experience as an Assistant
18 United States Attorney, when agreements are made as to what
19 we might call, as the defense here calls it, "important
20 promises," that are the main inducement for pleas of
21 guilty, are those agreements often put on the record?

22 A Quite often they are put on the record, yes, sir.

23 Q That was a conversation here with Judge Carter
24 that apparently was off the record about the subject of
25 sentence, is that correct?

105

1 hplt 29

Jaffe-redirect/recross

2 A To the best of my recollection, sentence was mentioned
3 in the robing room conference with Judge Carter.

4 Q Was there any discussion in front of Judge Carter
5 as to what the defense calls this very important promise
6 that it was attempting to elicit from the government?

7 THE COURT: That's already in the record, isn't
8 it?

9 MR. GIULIANI: I'm not sure Mr. Jaffe testified
10 to that.

11 A None that I can recall, sir.

12 MR. GIULIANI: I have no further questions.

13 RECROSS EXAMINATION

14 BY MR. LA ROSSA:

15 Q Are there occasions when you, as an Assistant
16 United States Attorney, have made promises that were not put
17 on the record?

18 A I have made promises that were not put on the
19 record on the transcript, that had been memorialized in
20 terms of a memo of some sort. Usually in my experience
21 when a person considers a promise that important he wants a
22 record of it.

23 Q Mr. Jaffe, have you ever made a defense lawyer
24 a specific promise and it did not become part of the record?

25 A Yes, sir.

107

1 hplt 30

Jaffe-recross

2 Q And did you hear the defendant say at that time
3 that no promises were made?

4 A I had that happen less than a month ago and at
5 the time that the defendant said it, I stood up and in front
6 of Judge Cannella, and said the defendant is incorrect and
7 I put the promise on the record.

8 The promise had to do with the defendant's cooper-
9 ation. My usual practice is, and I don't know of too many
10 times I have varied from it, if a man is made a promise,
11 that promise is conveyed to the Court so the Court knows
12 about it.

13 Q When you said "quite often they are put on the
14 record," you were in error because in your case it is
15 always on the record, is that right?

16 A I cannot testify it has always been on the
17 record. I can testify that my practice, usually, what I
18 try to do is, if I make a promise and that promise has
19 induced the man to plead, I want that on the record because
20 I don't want the plea set aside at a later time.

21 Q Do you know as a fact that many assistants in
22 this building and many experienced defense lawyers trade
23 promises with each other, when they are not made part of
24 the record, from your own experience?

25 MR. GIULIANI: Objection. Does he mean in terms

1 hplt 31

Jaffe-recross/redirect

2 of a plea of guilty or immunity? Let's have it specific for
3 the record.

4 MR. LA ROSSA: Ask the witness if he understands
5 it.

6 A If you are asking me, Mr. La Rossa, do I know of
7 times when promises are made that are not on the record, the
8 answer is yes. If you are asking me whether if I know of
9 a lot of cases where promises are made that induce guilty
10 pleas and thereafter the person pleading guilty is encouraged
11 or allowed to say no promise was made on the record, I know
12 of very few and if you know of them I would like to know
13 about them, because I would like to curtail the practice.

14 MR. GIULIANI: Your Honor, just two more questions
15 on that subject.

16 CONTINUED REDIRECT EXAMINATION

17 BY MR. GIULIANI:

18 Q Mr. Jaffe, do you know of any situation that you
19 ever had where a promise was made to a defendant as to what
20 would happen at the time of sentence, and in your experience,
21 both in your own cases or with other Assistant United States
22 Attorneys, that defendant was then allowed to go out in
23 court and when asked by the Judge "Were any promises made,"
24 say "No" and the government stood mute?

25 A I think in the Atanasio case which I talked about,

a case we had two years ago, we did not put on the record that the government would agree to stand mute. Other than that --

Q Did you consider the government in this case had made any promises to Congressman Podell other than to treat him as we normally would as a defendant in this court?

A Before I answer that, let me also say that this last case, that before we made that promise to the defendant that Mr. Shargel and Mr. La Rossa represented, I believe a memorandum was made of that promise.

I know that the matter was discussed with the then chief of the criminal division, Robert Morvillo, so it was not a matter the Assistant who had the case did something and it was not somewhere on the record.

Q The final question, Mr. Jaffe:

Did you at the time this plea was entered consider that the government had made any promise to Congressman Podell other than that he would be treated as any normal defendant of plea and sentence?

A No, sir.

REXCROSS EXAMINATION

BY MR. LA ROSSA:

Q Did you make a promise, you or Mr. Giuliani, to Mr. Marx on Mr. Miller's behalf before he took a plea?

1 hplt 33

Jaffe-recross

2 A Did we make a promise?

3 Q Yes, sir.

4 A We told him his cooperation would be made known.

5 Q Wasn't that a promise? Wasn't that an agreement
6 to him for taking that plea?

7 A Yes, and I believe that it had previously been
8 put on the record at various times. As a matter of fact, when
9 Mr. Marx made a motion -- there was a hearing held and as part
10 of the hearing Mr. Miller testified and he testified, I
11 testified, Mr. Giuliani testified and we all testified, that
12 Mr. Miller had cooperated with the government and we made a
13 promise to him and the Judge that presided at the hearing
14 was the Judge that took the allocution and he was aware of it.

15 Q Did you correct the pleading when Mr. Miller said
16 no promises were made to him on October 1st, 1974? Did you or
17 Mr. Giuliani correct that?

18 A Mr. La Rossa, there was nothing to correct. The
19 plea had been taken not as a plea without a trial. There had
20 been a trial and if you review the minutes, especially pages
21 1430 onwards, you will notice at one point both the Court and
22 government counsel and defense counsel, didn't go through an
23 entire allocution as it would as if no trial had happened,
24 because as the Judge himself said on the record, and you
25 agreed and Mr. Marx agreed, and both your defendants agreed,

171

hplt 34

Jaffe-recross

everybody was aware of everything that was going on and Rule 11 was more than completely satisfied.

MR. LA ROSSA: I have nothing further.

MR. GIULIANI: The government calls Mr. Mukasey.

THE COURT: Mr. Mukasey is going to go over this again? Is he going to testify substantially --

MR. GIULIANI: What I will do with Mr. Mukasey is put in the one conversation Mr. Jaffe wasn't present at.

M I C H A E L B. M U K A S E Y, called
as a witness on behalf of the government, being
first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GIULIANI:

Q Mr. Mukasey, you have heard the testimony given here and just so we can skip over those portions that are repetitious, you have heard my testimony and that of Mr. Jaffe and I take it on those matters you were present for, your testimony would be the same?

A Yes, it would.

Q I will ask you about one specific situation at which you were present, and Mr. Jaffe was not.

Shortly before the plea was actually entered in this case, and in the vicinity of the jury box of courtroom 1106, I think it is -- this would be at approximately

1 hplt 35

Mukasey-direct

2 4, 4:15 in the afternoon on October 1, 1974 -- were you present
3 for a conversation that took place between Mr. Guiliani,
4 Mr. Mukasey and Mr. La Rossa?

5 A Yes, I was.

6 I believe Mr. Shargel was also present, I believe
7 at some point of the conversation.

8 Q This conversation concerned the subject, whatever
9 the government would do or say at the time of sentence, is
10 that correct?

11 A That is correct.

12 Q Tell us of your own words what you recollect of
13 that conversation.

14 A I approached you and Mr. La Rossa at a time when
15 you were engaged in conversation, and at the point when I
16 approached I believe Mr. La Rossa said, "I just want to make
17 sure that you" - - to me that means the government -- and he
18 said words to the effect of "Don't unload or ask for a jail
19 sentence at the time of sentence," and then he turned to walk
20 away.

21 And, you walked after him, saying, "Wait a minute,
22 Jim, we are not going to recommend a specific jail sentence."

23 However, and then you went on to say in substance,
24 I don't recall the exact words, number one, that there was
25 going to be something said, that this was not going to be

173

1 hplt 36

Mukasey-direct

2 like the usual case where the government was just going to
3 get up and say "We have nothing to add to the presentence
4 report."

5 Number two, what was said was going to be strong.
6 And, number three, I think something to the effect of not
7 sitting on our hands.

8 At that point, I interjected and -- this is the
9 point I think I recall Mr. Shargel being there because I
10 think I expressed my puzzlement, why the conversation was
11 going on at all, since it was our usual policy not to make
12 the specific recommendation of the sentence, unless requested
13 to do so by the Court pursuant to an agreement that we con-
14 cluded with Judge Frankel and as far as I knew applied through-
15 out the courthouse, that if we were going to make a specific
16 recommendation it would be solicited by the Court at a
17 specified period in advance and a certain procedure would be
18 followed and at that point I believe either Mr. La Rossa or
19 Mr. Shargel asked whether the Judge, motioning in the direc-
20 tion of the bench, and the robing room, knew about that
21 agreement, and whether he made any requests pursuant to it and
22 at that point I said I didn't know which I didn't and do not.

23 That is the full extent of that conversation, as
24 far as I remember.

25 Q Was there any conversation at that time about what

hplt 37

Mukasey-direct

the government would do if a recommendation was requested as to a specific term of imprisonment?

A Yes.

Q What was that, if you recall, and who said it?

A I believe you said it and you said if we were asked for a recommendation, we would give one, and that it would go through the normal process.

Q Mr. Mukasey, you were present during the conversation that took place, meeting that took place, in the witness room or courtroom 1106, that all of us have testified about, Mr. Podell, Mr. La Rossa, etc.

A Yes.

Q Do you know the conversation I am talking about?

A I think I do. That is the point at which the language was being set out that would be used by Mr. Podell, by the government.

Q Were you present during that entire meeting?

A No, sir.

Q Were you present during most of that meeting?

A I was present during a substantial part of it. I think I was present during most of it, yes.

Q And what was the main reason for that meeting?

A Well, as I understood it, the main reason for that meeting was to determine, first of all, and this took a very

1 hplt 38

Mukasey-direct

2 short time, as I recall it, to determine which part of the
3 indictment, which specific paragraphs of Count 1 would be
4 parsed out for the purpose of the plea. That as I recall
5 was done in short order.

6 The second item of business appeared to be the
7 real sticking point and that was the language the defendant
8 would use during the allocution when he was asked by the
9 Judge to tell in his own words what he had done and at the
10 point when I came into the room, there was language already
11 on the table, setting forth what the defendant was going to
12 say, and I believe I interposed an objection to the effect
13 that if he was not committing a federal crime, it was
14 ridiculous for him to say that.

15 Q Was there any discussion about what the government
16 would say at sentence or anything, how we would help him
17 at the Bar Association that you recall?

18 A No.

19 Q Finally, Mr. Mukasey, did you have a conversation
20 with Mr. Marx, Mr. Miller's lawyer, about this letter of
21 January 2, 1975, on Monday of this week?

22 A Yes, I did.

23 Q Can you tell us what he said about it after you
24 read it to him on the telephone?

25 A He said he thought it was a "good letter."

1 hplt 39

Mukasey-direct

2 Q Was he satisfied what had been said for Mr.
3 Miller?

4 A I don't know if he was satisfied or not. He said
5 it was a "good letter."

6 MR. GIULIANI: No further questions.

7 THE COURT: Anything further?

8 MR. LA ROSSA: No questions.

9 MR. MARX: I have no questions.

10 Based on his testimony, I would like to testify
11 just for a moment. Mr. La Rossa will conduct the examina-
12 tion.

13 THE COURT: I gather you are going to testify
14 about Monday's conversation?

15 MR. MARX: Yes, your Honor.

16 R I C H A R D E M A R X, called as a
17 witness, being first duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. LA ROSSA:

21 Q Mr. Marx, this letter, Court's Exhibit number 1,
22 when was that read to you over the phone?

23 A I believe it was read to me Monday of this week.

24 Q After it was read to you over the phone, did you
25 call anybody up?

1 hplt 40

Marx-direct

2 A After Mr. Mukasey read this to me, I called you
3 up.

4 Q And did you tell me anything about that letter?

5 A I certainly did.

6 Q What did you tell me . about that letter?

7 A I told you that in my opinion, that such conduct
8 would not have taken place in the Southern District of
9 Florida. I also told you in my opinion it violated the
10 spirit and intent of the agreement. I also told you that I
11 thought the statements in the last paragraph which were
12 extremely favorable to Mr. Miller, were totally negated
13 by the first two pages.

14 Q Did we discuss getting a copy of the letter that
15 day?

16 A We certainly did.

17 Q Did I tell you I will send down for a copy of the
18 letter?

19 A You mentioned to me you would send somebody down and
20 get the letter because I hadn't received it.

21 Q Did you ever tell Mr. Mukasey that that was a good
22 letter?

23 A I might have said that the last paragraph was a
24 good part of the letter, but I didn't go into the details of
25 the letter with him because I felt it would serve no useful

1 hplt 41

Marx-direct

2 purpose in arguing with him over the telephone as to the con-
3 tent and reason for writing the letter.

4 MR. LA ROSSA: I have nothing further.

5 THE COURT: Thank you.

6 MR. JAFFE: We have no questions.

7 THE COURT: Anything further?

8 MR. LA ROSSA: Nothing further.

9 MR. JAFFE: Your Honor, may we have a two or three
10 minute recess before we close out?

11 THE COURT: You want a recess now?

12 MR. JAFFE: Just for two minutes. We would like
13 to discuss one matter before the government rests.

14 THE COURT: All right.

15 Mr. La Rossa, did you say you were leaving tomorrow
16 morning?

17 MR. LA ROSSA: Tomorrow morning at 9 o'clock.

18 (Recess taken.)
19
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25

(Resumed)

THE COURT: Mr. Giuliani is outside.

MR. JAFFE: Yes, your Honor.

Your Honor, I wish we could proceed right now, but can we wait for a few minutes?

THE COURT: I am not going to wait a few minutes. Have somebody get Mr. Giuliani and tell him we are waiting.

MR. JAFFE: We have sent out for him, your Honor, and he is here right now.

THE COURT: Anything further?

MR. JAFFE: Nothing further, your Honor.

THE COURT: All right. Is there anything further from you?

MR. LA ROSSA: No, sir.

THE COURT: I think I have announced already my position on the letter, the government's letter of JANUARY 2ND, Court's Exhibit 1, is a recommendation that prison term be imposed. Otherwise, the letter makes no sense at all to me.

The government does not recommend a specific prison term and argues this letter does not violate a representation. While that may be technically correct, I view the letter in essence as a violation of the spirit, if not the letter of the agreement.

However, I am not persuaded the representation played

1 a material or significant part in the plea of either Mr.
2 Miller or Mr. Podell. I am persuaded that the reason Mr.
3 Podell pleaded guilty to the conflict of interest count,
4 was principally and primarily and exclusively because he
5 was concerned that the jury might find him guilty of the
6 bribery count and that he would automatically be disbarred.
7

8 In pleading to the conflict of interest count,
9 he at least has a fighting chance to maintain his license
10 to practice law and I am convinced that that is the reason
11 for his plea, the reason he aborted the trial.

12 Insofar as Mr. Miller is concerned, once Mr.
13 Podell pleaded guilty, Mr. Miller had nothing else to do.
14 So that he had no choice, once Mr. Podell pleaded.

15 Therefore, the motion to withdraw the plea is
16 denied.

17 I am now prepared, in view of the fact that Mr.
18 La Rossa is going to leave on a holiday, I am now prepared
19 to proceed with sentence.

20 MR. LA ROSSA: May I ask if your Honor is not
21 so tired at this time that you would be able to give proper
22 attention to the arguments that are going to be made before
23 you at this time? I ask that most respectfully. I am just
24 concerned. I know your Honor has been working all day, and--

25 THE COURT: The problem I have, if you were going

1 hplt 3

2 to be here tomorrow morning, I would certainly prefer the
3 matter be delayed until tomorrow, but I do not think it
4 should stay in abeyance. Whatever happens, I can assure
5 you that whatever sentence is imposed, if you object to it,
6 it will be suspended to allow you to appeal. The execution
7 will be suspended, but I don't see any point putting it
8 off until the 28th or whenever you come back.

9 MR. LA ROSSA: I am ready to proceed.

10 May it please the Court, at this time I
11 respectfully request your Honor, as difficult as it may be,
12 to erase all of the activities that just went on for the
13 last few hours since they really have no part in what we
14 are bout to accomplish.

15 May it please the Court, I think you know as much
16 about Bertram Podell as anyone could, the position he is in.
17 You know he is forty-nine years old and a life-time resident
18 of Brooklyn. You know he has been admitted to practice some
19 twenty-four years as an attorney in New York, that he has
20 been a state legislator since 1954, and a federal member
21 of the House of Representatives since 1968.

22 I don't know if your Honor is aware, under
23 state law this conflict of interest does not apply to a
24 state legislator, that a state legislator who is a member
25 of the Bar and whose law firm did exactly the same things

1 hplt 3A

2 that Podell and Podell did would not violate New York law.

3 (Continued on next page.)

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Take 6 1 cmlt 1

2 That the only conflict of interest that a New
3 York legislator need be concerned about is an appearance
4 at a State Tribunal with the state as a participant in a
5 contested matter. That, sir, does not excuse the fact that
6 he established before you having been convicted of two
7 counts of this indictment.

8 However, may it please the Court, we should take
9 into account that the acts that we are talking about occurred
10 in 1968 as a freshman legislator, that because of newspaper
11 activities Bert Podell and his family have lived with this
12 over their heads for all of these years.

13 From the time that the Wall Street Journal first
14 published the story about this particular case until the
15 present day, newspapers have been replete with stories
16 about him, his family, about the facts of this case and as
17 he stands -- or as he sits here today he is no longer a
18 member of the House of Representatives having been
19 defeated.

20 The question of whether or not he is going to
21 be given the opportunity to practice law is seriously in
22 jeopardy. His relationship with his family certainly has
23 been terribly disturbed by this. One of the things I would
24 like to bring to your Honor's attention, I don't know if it
25 is such an extremely important point, is the \$10,000 check.

1 cmlt 2

2 The fact that Mr. Heiko and Mr. Bushnoff did agree that
3 they received a forwarding fee. And may it please the
4 Court, I have the cancelled check dated January 20th, which
5 I believe I showed Mr. Giuliani after the plea was taken,
6 in the amount of \$3,333 made out for Heiko and Bushnoff,
7 and if I may leave it here if your Honor wouldlike to see
8 it, it is cancelled on January 20th on the Podell and Podell
9 account (handing).

10 The reason I bring that up, may it please the
11 Court, is because the government's allegation is that some
12 12,000-odd dollars was paid to the Podell firm, reduced by
13 that \$3,300 and given his propostion at interest in that
14 money, it becomes a minor figure.

15 It is true that a large contribution was made to
16 his company, but none of the monies that were given to him
17 as a campaign contribution were used for anything more than
18 the running of a Congressional office.

19 None of the monies were used for his own personal
20 interest, for his family, for any trips that he made or any
21 other such thing. Admittedly, theywere given as a contri-
22 bution to enhance his career, his office was being run by
23 virtue of the funds and certainly it was to promote his
24 interest as a member of the House of Representatives.

25 But this one particular mistake that he made now

1 cmlt 3

2 leaves him in a position where the rest of his life is in
3 jeopardy. And your Honor knows that recently another member
4 of the House of Representatives was sentenced in this court,
5 and I am not suggesting now that what another judge did in
6 this building in any way ties your hands, however, Judge
7 Kaufman has appointed a committee to study disparate sentences.
8 That committee is at a point now where they are ready to
9 recommend to the bench in this court a benchmark type of
10 sentence on every particular case and they are working on it
11 right now.

12 Judge Lombard and all the judges on that committee
13 who are all either members of this district or the United
14 States Court of Appeals, agree that this is the most sensible
15 thing to do.

16 I respectfully submit that this case is not the
17 same case as that other one. That it doesn't involve an alleged
18 mafia figure who was a five-time felon. That it does not
19 involve the cancelling of bids that cost the government
20 money. And it was a conviction for bribery.

21 And another judge in this court, conspiracy to
22 commit bribery -- and another judge in this court sentenced
23 that man to ninety days.

24 Now, am I suggesting to you that that judge in
25 any way preempts your right to do anything different,

186

1 cmlt 4

2 absolutely not. I don't think I have a right to do that.
3 But may we not make a legitimate comparison between that
4 case and this? Both were old cases, both were members of
5 the House of Representatives from Brooklyn. One, I think,
6 has a little more serious involvement quite frankly than
7 Mr. Podell.

8 Can we treat this case in a different manner than
9 that one? So we either make one or two decisions, that that
10 sentence was completely irrational or should not have been in
11 that particular case, but if it was not then certainly Mr.
12 Podell's sentence should be treated somewhere in the area that
13 that other member of the House of Representatives received.

14 Naturally, your Honor's sentence is virtually not
15 going to rehabilitate Mr. Podell. I don't think I ever
16 believe that he will be before another Court again. I don't
17 think I need waste much time on that.

18 There is a question of a deterrent factor to a
19 sentence and I know your Honor has to weigh that as well.
20 But hasn't this caused enough of a deterrent when on the
21 day after the plea we saw headlines in the Daily News saying
22 "Podell Convicted of Bribery"?

23 When his family is put in the situation that they
24 are in right now? Where a father who was a legislator since
25 1954 is now considered a crook in the neighborhood?

187

1 cmlt 5

2 Should we take this man and incarcerate him and
3 further effect that family at this point for an act that
4 occurred some seven years ago? Or is there an alternative?
5 For many years, Burt Podell was involved in prison reform
6 as a member of the New York State Legislature. He chaired
7 a committee that went to Attica long before the Attica
8 riots and suggested reforms. He travelled in probably
9 every prison in the State of New York as a member of that
10 committee.

11 Before this sentence date he has offered his
12 services to both the Vera Committee and the Fortune Society
13 in a real effort to see whether he could assist people less
14 advantaged than him in an attempt to offer them some sort of
15 service as a member of the Bar and a former legislator.

16 Wouldn't it be to the best interest of society
17 to somehow help someone else through him instead of putting
18 him into an institution where he just creates a drain on
19 society? This was a dollar crime, your Honor has got large --
20 the right to fine extensively with respect to it. Your Honor
21 has the right to say, do something for society in the fol-
22 lowing manner, spend "X" amount of hours a week, or days,
23 do it in the following manner, so that the probation
24 department can say to me that you are doing -- living up
25 to the spirit of what I want. Otherwise I will incarcerate

1 cmlt 6

2 you. No games. A real, honest effort to help someone else,
3 by virtue of what he did in 1968.

4 What a deterrent factor that would create and yet
5 society would get some good out of it.

6 I respectfully submit that an incarceration
7 at this point in this man's career, in no way assists
8 society, and certainly does him no good. I ask your Honor
9 to take all the arguments, I apologize for the time of
10 night, and I ask you to be as considerate to Bert Podell
11 as you can, under the circumstances.

12 MR. GIULIANI: Your Honor, do you want to hear
13 from the government now or after Mr. Miller? I don't know
14 what practice you follow.

15 THE COURT: Well, I suppose the best thing --

16 MR. GIULIANI: I won't be very long on either
17 one.

18 THE COURT: I suppose the best thing to do is to
19 hear from Mr. Marx. Then I will hear from the government
20 and then I will hear from Mr. Podell, if he wants to, or
21 Mr. Miller.

22 MR. MARX: If it please the Court, I will attempt
23 to be as brief as I can.

24 As you will note in the probation file we did
25 not deem it necessary to attempt to influence this Court by

1 cmlt 7

2 self-serving statments and declarations. I think sometimes
3 frankly it is an insult to everybody concerned to go
4 through some of the processes to try and convince the Court
5 as to what the Court really knows. But I would like to take
6 one moment to provide the Court with a docket that I
7 apologize was inadvertently left out and that is a medical
8 report of the condition of Mr. Miller, and the reason for
9 that is I know that at the onset of the proceedings the
10 question had arisen concerning his condition and frankly
11 his condition was suspect by the government (handing).

12 We would apologize, of course, to what took place
13 but the government's own report, which the Court received
14 some time after the trial indicated that an illness did in
15 fact take place.

16 If I may, your Honor, address myself to the deter-
17 rent factor which was raised --

18 THE COURT: Do you want this for the file?

19 MR. MARX: Yes, I would appreciate that, your Honor.

20 In the January 2nd communication by the government,
21 to the Court they asked for the relief that we have argued
22 about for a few hours. Unfortunately I think some of us who
23 labor before the Courts lose sight of what a defendant goes
24 through in being represented and representing himself. And I
25 submit to this Court that for Mr. Miller, who lives in Miami

1 cmlt 8

2 the past two years have been a virtual hell. The trial, the
3 proceedings had necessitated an inordinate expense upon him,
4 upon his family. The necessity to be in court five days a
5 week, to go home to his family on a Friday, to fly back to
6 New York on a Sunday, week in, week out.

7 I submit to your Honor that the entire procedure of
8 the criminal justice system has done its job on Mr. Miller.
9 And I tell this Court candidly and openly that what he and
10 his family have gone through are enough. That whatever this
11 Court deems proper in its wisdom, he has paid the price. He
12 will not be before this Court again, nor any other Court,
13 because I think he has learned, like many people learn some-
14 times too late, that there is a morality and that there is
15 a law and it applies to each and every one of us and it cannot
16 be picked at random which one we are going to follow, and I
17 think your Honor, frankly, that at the time in question, in
18 1968, when Mr. Miller was a lot younger, I think in his 20s,
19 he might have been of the opinion that this was the way
20 business was conducted in this country. But I can assure the
21 Court openly and frankly, that he knows the distinction
22 today.

23 I would further join in with Mr. La Rossa on the
24 issue of incarceration and say to your Honor that if you feel
25 in your wisdom that incarceration or a jail sentence is

1 cmlt 9

2 warranted, that a meaningful sentence would be to put him to
3 work at some social function that would be of benefit to
4 mankind. And I don't use the word "mankind" lightly, but
5 to put the Congressman and Mr. Miller in jail is an expense,
6 they have learned their lesson, and I cannot implore this
7 Court enough, to beg the Court to understand in its wisdom,
8 the damage that's been done and to take this into considera-
9 tion at this late hour in passing sentence upon Mr. Miller.

10 Thank you, Your Honor.

11 THE COURT: Mr. Giuliani?

12 MR. GIULIANI: Your Honor, the crimes these two
13 defendants were convicted of are, at least on the part of the
14 United States Congressman, among the most serious crimes to
15 be committed by a public official. They involve on the
16 Congressman's part the sale of the influence of his office
17 for money to be used for the private benefit of a businessman,
18 Miller.

19 As your Honor recalls the testimony in the case
20 which overwhelmingly established that Mr. Miller paid
21 Congressman Podell money in two forms in return for Congress-
22 man Podell's using his influence to get meetings with "CAB"
23 officials that would not have been gotten had someone not
24 paid off a Congressman to use his influence to get those
25 meetings.

1 cmlt 10

2 They involved his being able to travel down to the
3 Bahamas to arrange meetings with officials of the Bahamian
4 government that would not have been had, had they not bought
5 and had working for them a United States Congressman who they
6 were paying to do this.

7 It involved representing Mr. Miller at a meeting,
8 a formal meeting of the CAB" where Congressman Podell in
9 the words of one of the witnesses who testified by deposi-
10 tion, leaned on the CAB officials to see what they could do
11 for the airline that was paying him. It involved Congressman
12 Podell's right at the time that the FAA proceedings were pending
13 to suspend Florida Atlantic's license, having called an
14 official of the FAA, having yelled at him on the telephone
15 according to the testimony of the government witnesses, and
16 right in that period of time while those proceedings were
17 pending, having taken a check from Mr. Miller for \$29,000
18 which was given to him in blank, which he admitted on cross
19 examination he filled in as to the name of the payee and what
20 Mr. Miller in effect did was give him a check for \$29,000
21 without the name of the payee filled in.

22 Mr. Podell decided how he would take that money.
23 We have no proof one way or the other as to what that money
24 was used for. Those checks from that account have never
25 been produced, although they were subpoenaed by the grand

1 cmlt 11

2 jury, the Fifth Amendment privilege was taken as to them so
3 we do not know how the money was used.

4 But we will assume the money was used as Mr. La
5 Rossa says it was used, to support the campaign offices and the
6 campaign of Congressman Podell. Surely that is for his
7 benefit and no one else's. So that was used to pay him off
8 with campaign contributions. It doesn't really much matter
9 what you take in the way of a benefit. If you take a
10 campaign contribution or a new car or cash.

11 But most importantly, your Honor, there is a long
12 history to this litigation that I think says a lot about the
13 facts of this case. This defendant was indicted in July of
14 1973. At the time of his indictment he held a press conference
15 at which he stated that he was totally innocent of these
16 charges and that these charges were the product of vindictive
17 prosecution trying to single him out, that these charges were
18 in essence a political prosecution.

19 He had made those same statements in a grand jury.
20 He had been invited by a grand jury to submit proof of any
21 of that. He made those same statements in his motion papers
22 to your Honor and your Honor denied his motions as baseless
23 and asked him to submit proof of these claims that he had
24 made first on television and later on in violation of your
25 protective order on the floor of Congress, that he was somehow

1 cmlt 11A

2 the victim of a political prosecution; that the United States
3 Attorney's office had somehow singled him out because he was a
4 democrat to prosecute him.

5 (Continued on next page.)
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2 In fact his guilty plea reveals that the reason
3 he was prosecuted was because he had violated federal law
4 as he admits to having committed two federal felonies and
5 not because of any of these political reasons that he was
6 using and lying about to the public, to his own colleagues
7 in Congress.

8 Consider his own re-election campaign that Mr.
9 La Rossa argues to you. Mr. La Rossa says to you he's
10 been turned out of office. Well, during that election
11 campaign Mr. Podell represented to the public, to the people
12 who had the obligation of deciding who their congressman
13 would be that he was not involved in these crimes. That
14 was the representations that he made to them during that
15 campaign. Yet, fortunately they decided they didn't want
16 him as their congressman.

17 But he argued during that campaign, fraudulently
18 the Government submits, and the plea establishes, that he
19 was not involved in these crimes. That is why he was turned
20 out of office. That's why he stands here without his seat.
21 We don't think, the Government doesn't think and the
22 Government submits that the fact that he is no longer a
23 congressman is not a fact that should be taken into con-
24 sideration by the Court in terms of whatever sentence the
25 Court imposes.

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2 He was turned out of office because the people of
3 his district didn't want a congressman apparently at that
4 point accused, now proven, to have committed federal
5 felonies. There is no doubt, your Honor, and we have heard
6 it often in these days, that this whole process, accusing
7 a man of a crime, having a man convicted of a crime, par-
8 ticularly a man in a position like Mr. Podell or Mr.
9 Miller, in one case a politician and a lawyer in another
10 case, a very successful business man, has a devastating
11 effect on his personal life. But that's probably true of
12 almost every man who appears before you for sentence.

13 I don't think that should play a terribly impor-
14 tant part in the sentencing process since that ends up being
15 the result for almost everyone who stands before you. It's
16 just that those who have more advantage could argue those
17 things more strongly because they end up being more devas-
18 tated by this kind of thing. But most importantly, your
19 Honor, the Government is not urging that somehow we are
20 going to deter Mr. Miller or Mr. Podell from doing this again
21 personally.

22 The Government isn't urging that they -- that you
23 should consider that they have to be punished or anything
24 like that. The Government is merely pointing out to the
25 Court that these offenses are the kind that are probably

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2 more susceptible of deterrence than most others that will
3 come before your Honor for sentence. It isn't a crime of
4 violence. It isn't a crime of passing. Mr. Podell decided,
5 very shortly after he was elected to Congress I may add,
6 and Mr. Miller decided, that they would, in very simple
7 language on Mr. Miller's part, buy the influence of a
8 Congressman to use for the benefit of his business. He
9 would pay whatever that congressman wanted for that congress-
10 man to go in there to the CAB, to the FAA, to the Bahamian
11 Government and make a pitch, and a strong one, for his
12 private benefit.

13 And that's what he was getting, he was buying
14 himself a United States Congressman and Mr. Podell was
15 selling.

16 And what he sold was the influence of his office.
17 The Government convers that a very serious crime. The
18 Government also, in reliance on United States vs. Hendrix
19 decided by the Second Circuit, points out to the Court that
20 the Court can take into consideration whatever it finds
21 Mr. Podell has lied about under oath during the course of
22 the trial.

23 The Government submits that from the testimony
24 during the course of the trial, and not just from the guilty
25 plea, in fact, most importantly from the testimony during

1 the trial, the Court can find that Mr. Podell did in fact
2 commit perjury and lied under oath when testifying under
3 oath before your Honor in this trial. That he had done that
4 over a period of a day and a half and that after cross
5 examination, revealed the fact that he was lying on a number
6 of material issues, he decided to plead guilty.
7

8 But what the Government is arguing is that the
9 Court can take into consideration the fact that Mr. Podell
10 committed perjury at the trial. As to Mr. Miller, it's
11 the Government's view, and the Government's argument,
12 that Mr. Miller was equally involved in these crimes with
13 Mr. Podell but that, I don't know if you want to term it
14 in his favor or to his benefit, or to make some distinction
15 between the two, Mr. Miller was not a public official, he
16 had not raised his hand and taken an oath to uphold the
17 laws of the United States and then gone about and sold
18 that oath for money whether it go in the form of a legal
19 fee or a campaign contribution, so that we don't have that
20 added factor with Mr. Miller.

21 And as your Honor has heard now numerous times
22 at the hearing and today, and in the letter, the Government
23 urges and sincerely urges upon the Court, consideration of
24 Mr. Miller's cooperation at the time when this case was
25 still in its infancy when the question of whether these

1 crimes would be revealed, I might tell your Honor was in
2 doubt.

3
4 Most people did not want to testify. Most
5 people originally lied about their involvement in this
6 because they didn't want to be involved having to testify
7 against an important political figure.

8 Mr. Miller came forward and after -- I candidly
9 must say -- some day or two of not being candid about this
10 and refusing to admit his involvement in it, he told both
11 Mr. Jaffe and myself essentially the entire history of
12 his involvement with Mr. Podell, excluding the fact that he
13 had paid Mr. Podell the \$29,000 check which he later
14 admitted on the even of the indictment.

15 So that Mr. Miller did cooperate with the
16 Government. Did testify in the main truthfully before
17 the grand jury, and was of great assistant to the Govern-
18 ment in being able to put together this case to find its
19 witnesses and in that sense we were able to use his testi-
20 mony to discover other witnesses and to persuade them to
21 testify.

22 So that I urge on the Court and I realize this
23 has been a very confusing proceeding today, and the whole
24 situation with Mr. Miller has been confusing but I sincerely
25 urge upon the Court and ask the Court to take into considera-

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tion the fact that Mr. Miller was very helpful to the Government.

Your Honor, in closing, I just say that it's hard for me, and when I say "me" I mean myself and Mr. Jaffe and Mr. Mukasey, given the situation of these two men and particularly Congressman Podell, how this crime involving Mr. Podell's taking money to use the influence of his public office can be described as anything but a serious and blatant disregard of federal law.

He has admitted that he is a federal felon. I don't think I have to say any more.

THE COURT: All right, Mr. Podell, do you want to make any statement?

MR. PODELL: Yes, your Honor. I guess I spent, if your Honor please, most of my life either as a lawyer or as a politician pleading for somebody. I guess this is the first time I have ever tried pleading for myself.

What occurred here occurred shortly after I became a congressman, perhaps six months, and while I do not at this time, or am unable at this time to go into an entire discussion of, does a congressman or should a congressman break law, and when does the hat of a congressman and the hat of a lawyer differ, or when does his work begin and when does his work end.

201

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2 I think that's almost impossible to distinguish
3 on many occasions. I perhaps can cite an example if the
4 Court pleases, of a congressman who buys a restaurant on
5 behalf of a client, and after the sale is completed the
6 owner of the restaurant calls the congressman and says we
7 have a problem. Our chef is an Italian immigrant. He is
8 being deported back to Italy. Can you help us? And the
9 congressman-lawyer then calls the Department of Immigra-
10 tion.

11 If your Honor please, I know that I was admonished
12 not to dwell on the facts of our case. There is no
13 difference. Mr. Miller didn't come to a freshman congress-
14 man six months on the Space Committee for his ability to
15 bear influence with the CAB or the FAA or the State Depart-
16 ment. I was lucky I could find my way to the bathroom in
17 those days, your Honor. Yet I came from a legislative
18 body with the very action, the very acts that I had par-
19 ticipated in were not a crime.

20 Members of the State Legislature are permitted
21 to appear before state agencies and practice law. They
22 were only prevented in those days in 1968 from actually
23 appearing before the Court of Claims. I made a mistake. I
24 went too far. My attempt to represent Mr. Miller and the
25 airline in the Bahamas, I had the right to believe at that

1
2 time, if your Honor pleases, that our Government had com-
3 pleted its act, the letter, the opinion letter stated
4 that the United States Government had approved the route.

5 It was up to the Bahamas and that was where I had
6 a friend in Mr. Case. But so I guess that any congressman
7 who is a lawyer, is susceptible to this problem. And maybe
8 some day Congress will be a full time job, perhaps if anyone
9 thing comes out of this case, there will no longer be any
10 congressmen-lawyers. There will be just congressmen.

11 I saw I was wrong. I committed an act, I vio-
12 lated a law. No one gave me cash under the table. There
13 were no secret meetings. Mr. Giuliani refers to a check
14 which he referred to as a blank check. It wasn't a blank
15 check. The payee was left off because I was asked who
16 to make the check payable to and I said, the Committee or
17 the Campaign Committee for the Re-Election of Congressman
18 Bertram L. Podell. He said, "For God's sake, fill it in
19 yourself."

20 How many does do you buy a pair of shoes and
21 you make out a check for a pair of shoes and you ask the
22 name of the payee and the storekeeper says, I will stamp
23 the name in. There is no difference. A blank check. But
24 I guess I did violate the law and as a lawyer, I must
25 realize that.

203

As a lawmaker, I have to realize that there was a

1 law that I violated. And so I was compelled to pay.

2 But you know politicians, your Honor, are not
3 treated the same as everybody else. A man commits a crime
4 and he pays. He gets sentenced. The sentence expires
5 and he is through. Not the politician. He pays and pays
6 and pays and pays and pays.

7 It first begins, you are indicted. First comes
8 the charge in the paper. Then the investigation. And then
9 the indictment all over the papers. And you pay. And
10 every time your secretary calls you off the floor and says
11 there is a telephone call, you pay because you wonder
12 who is calling you now. Then you run for public office
13 and your opponent blasts you all over the papers. When
14 you are a politician you choose this as your career and
15 you have an obligation to be able to take the heat. My
16 kinds didn't choose politics.

17 You know, I had a little gimmick, my kids
18 wore buttons, "I am another Podell." And my daughter
19 Elen was at the polls, not a strange poll, my polling
20 place where I live, where I vote.

21 And she was handing out placards at the polling
22 place. People were saying that Podell, he is a crook.
23 My 11 year old Gary at school, you knew this Judge, never
24 knew it. Kids were putting notes in his book, "Your father's
25

1 a crook." Teacher had to call my wife to school because
2 Gary wasn't doing his work. Talk about paying. My wife
3 shops by telephone, Judge. Doesn't want to see the people
4 in the supermarket. Paying? We decided to move, take an
5 apartment in Manhattan and sell the house. You know the
6 brokers tell us that there are apartment houses that won't
7 take us because I am a politician and because of the fact
8 I was convicted of a crime. Paying.

9
10 You walk into a restaurant and you believe that
11 every single table is looking at you and saying, there
12 goes Podell. Even a dog, a dog owner gets a free bite but
13 not the politician.

14 I don't know, for me jail would be a blessing.
15 I have no problems to face, no concerns. But I guess we
16 don't live alone, we have a family and children. I don't
17 know if there is anything to add. I don't know what I
18 would do if I were sitting in the Court's place. You think
19 about that. I could only say, your Honor, that I would
20 like to have a shot perhaps to do what Mr. La Rossa suggested
21 and continue to do what I have done for so many years, help
22 other people.

23 Thank you.

24 MR. MILLER: The only thing I would like to say,
25 your Honor, is as I have told this Court before at the time

205

or my acts I had no knowledge of the federal conflict of interest statutes. However, your Honor, I did know what I was doing was wrong from a moral point of view. It was a shortcut, it was just a ruthless way of accomplishing my own objectives. And I can only tell the Court that I am truly sorry for my actions, and I can only say that it will never be something that I will do again. There is a morality that is even beyond the law and had I followed that I would not have violated the law. That's all I have to say, your Honor.

THE COURT: I have been troubled, but the time has come to make a decision and I have been trying in my own mind to justify not sending you to prison, Mr. Podell, but I have not been able to do so.

I really regard this insofar as you are concerned, I think that the thing that you have indicated in terms of the life of a politician that is the nature of the beast, and you choose that. I won't attempt to say anything more because I don't want to sound pompous about it, but at any event, it does appear to me that what was done was corrupt.

The Government -- there is too much corruption in Government at the present time and Government officials who engage in corruption must be at least symbolically punished.

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2 So on Count 1, which you pleaded guilty to, I am
3 going to sentence you to two years imprisonment and sus-
4 pend all but six months of that. On Count 5, which you
5 pleaded guilty to, I am going to fine you \$5,000.

6 Mr. Miller, I really regard your -- unlike the
7 Government, I regard your role in this as being more
8 heinous than Mr. Podell's because you were a corruptor.
9 But for the fact that you had some money, he might not have
10 been tempted to do what he did. However, I am not going to,
11 as far as you are concerned, I am going to sentence you to
12 two years imprisonment on Count 1 and suspend all but six
13 months, and fine you \$10,000.

14 I am going to give both of you a stay of execu-
15 tion of your sentence to allow you to appeal, and provided
16 the appeal, the notice of appeal is filed no later than
17 the week of January 20, I think Mr. La Rossa will be back
18 and you can then secure a stay from the Court of Appeals
19 until the matter has been heard. I think that's all we can
20 do tonight.

21 MR. GIULIANI: Your Honor, if I understand cor-
22 rectly, if by January 20, they don't file a notice of
23 appeal what would happen then?

24 THE COURT: Well, if they don't file notice of
25 appeal by January 20, sentence would be put into effect.

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142

MR. GIULIANI: Then we should notice them to
surrender?

MR. LA ROSSA: We will file a notice of appeal.

MR. GIULIANI: All right.

THE COURT: All right.

The open counts -- I will accept it --

MR. GIULIANI: Your Honor, the Government is not
going to move to dismiss any of the open counts if there is
an appeal pending.

THE COURT: All right.

(Court adjourned at 8 o'clock p.m.)

208

WITNESS INDEX

143

	<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	Bertram Podell	17	19		
4	Rudolph W. Giuliani	30	46	53	
5	James M. LaRossa	54	60		
6	Martin Miller	75	77		
7	Gerald Snargel	79	81		
8	Joseph Jaffe	89	96	102	103
9				105	106
10	Michael B. Mukasey	103			
11	Richard B. Marx	113			
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

200

JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 Cr. 675 R.L.C.

BERTRAM L. PODELL,

Defendant.

-----X

In the presence of the attorney for the government, the defendant appeared in person on this date, 1-9-75, with counsel, James M. La Rossa and Gerald Shargel.

PLEA - GUILTY, and the court being satisfied that there is a factual basis for the plea, to counts 1 and 5.

Defendant has been convicted as charged of the offenses of conspiracy to defraud the United States of America (Title 18, United States Code, Section 371), conflict of interest (Title 18, United States Code, Sections 203(a) and 2).

The court asked whether the defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the

custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on count 1, and on the condition that the defendant be confined in a jail type institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended. Pursuant to Title 18, United States Code, Section 3651. On count 5 the defendant is FINE \$5,000 dollars fine is to be paid or the defendant is to stand committed. Defendant was advised of his rights to appeal. The open counts are to remain open until the United States Court of Appeals for the Second Circuit hears the matter on appeal or issues a stay. The defendant surrender is stayed pending the filing of a notice of appeal no later than January 24, 1975.

/s/ Robert L. Carter
United States District Judge

CERTIFIED AS A TRUE COPY

THIS DATE JAN. 9, 1975

BY /s/ CLARK D. McCOLLOUGH
CLERK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 675

BERTRAM L. PODELL,

Defendant.

-----X
S I R :

PLEASE TAKE NOTICE that BERTRAM L. PODELL hereby appeals to the United States Court of Appeals for the Second Circuit from an Order entered by the Hon. Robert L. Carter, United States District Judge, denying his Motion pursuant to Rule 32(d) of the Federal Rules of Criminal Procedure for the withdrawal of his plea of guilty.

Dated: New York, New York
January 10th, 1975

Yours, etc.

TO:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
26 Federal Plaza
New York, New York

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
BERTRAM L. PODELL
522 Fifth Avenue
New York, New York 10036
687-4100

By: /s/ JAMES M. LA ROSSA
A Member of the Firm

Defendant's home address is:
153 Rugby Road
Brooklyn, New York

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 73 CR 675 RLC

BERTRAM L. PODELL and MARTIN
MILLER,

Defendants.

-----X

NOTICE IS HEREBY GIVEN that MARTIN MILLER, one of the defendants in the above entitled cause, hereby appeals to the United States Court of Appeals for the Second Circuit, from the Honorable Robert L. Carter's, one of the Judges of the United States District Court, Southern District of New York, Judgment of Conviction for Conspiracy to Commit Conflict of Interest, entered on October 1, 1974 and more specifically Court's Order of January 11, 1974 denying Defendant's Motion to Dismiss the Indictment, and Court's oral order of January 9, 1974 denying the Defendant, MARTIN MILLER'S Motion to Withdraw his Plea of Guilty in the above entitled cause.

DATED, this 17th day of January, 1975.

RESPECTFULLY SUBMITTED,
MARX & SQUITERO, ESQS.
Attorneys for Defendant Miller
2951 South Bayshore Drive
Miami, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of
the above and foregoing Notice of Appeal was mailed to:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Dept. of Justice
26 Federal Plaza
New York, New York

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
Bertram L. Podell
522 Fifth Avenue
New York, New York 10036

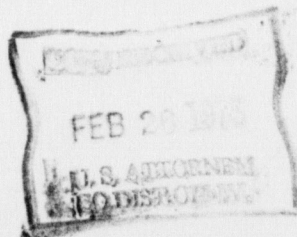
this 17th day of January, 1975.

/s/ RICHARD B. MARX
RICHARD B. MARX, ESQ.
MARX AND SQUITERO, ESQS.
Attorneys for Defendant Miller
Suite 7A
2951 South Bayshore Drive
Miami, Florida 33133

Martin Miller
101 S.W. 71st Avenue
Miami, Florida.



PAUL J. CURRAN



2 ap